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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1947~~ 1948

No. ~~626~~ 27

AMERICAN FEDERATION OF LABOR, ARIZONA STATE FEDERATION OF LABOR, PHOENIX BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL., APPELLANTS,

vs.

AMERICAN SASH & DOOR COMPANY, D. A. BREWER, W. B. STEVENS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

FILED FEBRUARY 25, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 626

AMERICAN FEDERATION OF LABOR, ARIZONA STATE FEDERATION OF LABOR, PHOENIX BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL., APPELLANTS,

vs.

AMERICAN SASH & DOOR COMPANY, D. A. BREWER, W. B. STEVENS, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

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In The

Supreme Court

of the

State of Arizona

AMERICAN FEDERATION OF LABOR; ARIZONA STATE FEDERATION OF LABOR; PHOENIX BUILDING AND CONSTRUCTION TRADES COUNCIL; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; MILLMEN, CABINET MAKERS AND LUMBER HANDLERS UNION No. 2093; FOREST L. STIERS, individually and as President of LOCAL UNION No. 2093, and RALPH HENLEY, d.b.a. RALPH HENLEY MILLWORK,

Appellants,

vs.

AMERICAN SASH & DOOR COMPANY, a Corporation; D. A. BREWER; W. B. STEVENS; EDWARD L. BEARD; JAMES R. MILLER, and JOHN L. SULLIVAN, individually and as Attorney General of the State of Arizona,

Appellees.

} No. 5028

ABSTRACT OF RECORD

J. H. MORGAN,
H. S. McCLUSKEY,
Phoenix, Arizona,

JOSEPH A. PADWAY,
HERBERT S. THATCHER,
Washington, D. C.

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Phoenix, Arizona

Attorneys for Appellants.

Filed in the Supreme Court this.....day of

....., 1947.

.....

Clerk of Supreme Court

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In The

Superior Court

of the

State of Arizona

In and for the County of Maricopa

AMERICAN FEDERATION OF LABOR: ARIZONA STATE FEDERATION OF LABOR: PHOENIX BUILDING AND CONSTRUCTION TRADES COUNCIL: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; MILLMEN, CABINET MAKERS AND LUMBER HANDLERS UNION NO. 2093; FOREST L. STIERS, individually and as President of LOCAL UNION NO. 2093, and RALPH HENLEY, d. b a. RALPH HENLEY MILLWORK.

Plaintiffs and Representative of a Class.

vs.

AMERICAN SASH & DOOR COMPANY, a Corporation; D. A. BREWER; W. B. STEV-

No. 57575

Division 1

ENS, EDWARD L. BEARD; JAMES R. MILLER, and JOHN L. SULLIVAN, individually and as Attorney General of the State of Arizona,

Defendants and Representative of a Class.

COMPLAINT FOR DECLARATORY JUDGMENT AND EQUITABLE RELIEF.

Filed: Feb. 12, 1947.

Come now plaintiffs above named, by their undersigned attorneys, and for cause of action against defendants, above named, allege:

I.

THE NATURE AND PURPOSE OF THIS ACTION

This is a suit of a civil nature, brought under the Arizona Declaratory Judgment Act (Art. 7, Chap. 27, A.C.A. 1939) to obtain a declaratory judgment in respect to the interpretation, effect and legality of the so-called "Anti-Closed-Shop Amendment" to the Arizona Constitution, and brought also to obtain certain equitable relief within the equity

jurisdiction of the Arizona courts. The rights, status and legal relations of the parties herein are affected by the adoption of such amendment to the Arizona Constitution, and the rights, status and duties and obligations of such parties have been made uncertain and insecure by reason of such amendment, all as more fully hereinafter set forth. The purpose of this action is to obtain a declaration of the rights, duties and obligations of such parties under such amendment and, in addition, to obtain equitable relief against the defendant law enforcement officials, as more fully hereinafter set forth.

The amendment in question, commonly called and hereinafter referred to as the "Anti-Closed-Shop Amendment," was ratified by referendum vote of the people of the State of Arizona in November of 1946 as an amendment to the Constitution of the State of Arizona. Such law purports to prohibit any form of union-shop provision in existing or future collective bargaining agreements between employers and representatives of employees. The term "union shop" or "union security" agreements, as used in this complaint, includes any and all agreements between employers and labor organizations or other representatives of employees wherein membership in a labor organization is required as a condition of employment.

The issues are the construction and validity of the said Amendment, as well as the constitutional rights of the plaintiffs and their constitutional immunities, and the rights and obligations of the parties hereto under said Amendment.

II.

THE PLAINTIFFS, THEIR FUNCTIONS AND RIGHTS

1. At all times herein mentioned, the plaintiff, American Federation of Labor, was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions, the said affiliated associations having an aggregate membership of several million persons in all States of the United States, including the State of Arizona and in Canada, and all of said members are classified accordnig to their various trades and industries into separate, voluntary and unincorporated associations or labor unions. The American Federation of Labor maintains its principal office in the City of Washington, District of Columbia, and William Green is its president.

2. At all times herein mentioned, the plaintiff, Arizona State Federation of Labor, was and now is a voluntary and unincorpor-

ated association composed of numerous voluntary and unincorporated associations or labor unions, known as national or international unions and their local unions affiliated with the American Federation of Labor, operating in the State of Arizona. The Arizona State Federation of Labor has its headquarters in the City of Phoenix, State of Arizona, and A. E. Williams of that City is its president.

3. At all times herein mentioned, plaintiff Phoenix Building and Construction Trades Council, was and now is a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations, or labor unions, known as national and international unions, and their local union affiliates, affiliated with the American Federation of Labor and the Arizona State Federation of Labor, operating in the State of Arizona and whose members are employees engaged in various building and construction trades in the State and particularly in the City of Phoenix. It has its headquarters in the City of Phoenix, State of Arizona, and A. E. Williams, of that city, is its President.

4. The plaintiffs American Federation of Labor, the Arizona State Federation of Labor, and the Phoenix Building and Construction Trades Council include among their affiliated organizations local and national labor

unions, as more particularly described as plaintiffs, *infra*, which have been designated and selected as collective bargaining representatives by a majority of employees of each of many employers in appropriate collective bargaining units in the State of Arizona, and a large number of such local and national unions presently are parties to, or desire or are about to become parties to, various types of union-shop or union-security contracts with various employers throughout the State of Arizona and in the City of Phoenix. Such plaintiffs bring this action on behalf of such affiliated labor organizations operating within the State of Arizona and their members, labor organizations and members being too numerous to bring in as parties, the interest of such labor organizations, and the members thereof, however, being similar.

5. At all times herein mentioned, the plaintiff United Brotherhood of Carpenters and Joiners of America (international Union) was and now is a voluntary, unincorporated association of employees employed in the carpentry trade and constitutes an International labor organization. It has a total membership of approximately 2,000,000 such employees in numerous states of the United States and Canada, including approximately 3,000 in the State of Arizona. Its president is William L. Hutcheson. It maintains its

principal office in the City of Indianapolis, State of Indiana, and it is affiliated with the plaintiff's American Federation of Labor, the Arizona State Federation of Labor, and the Phoenix Building and Construction Trades Council. Its members are organized into autonomous subdivisions known as local unions, a number of which are located in Arizona and consist, in whole or in part, of residents of the State of Arizona employed in such trade.

6. At all times herein mentioned, the planitiff Millmen, Cabinet Makers, and Lumber Handlers Union No. 2093, hereinafter referred to as Local Union No. 2093, is such a local union affiliated with the plaintiff United Brotherhood of Carpenters and Joiners of America and is located in the City of Phoenix, Arizona. Plaintiff Forest L. Stiers is its President.

7. At all times herein mentioned, the plaintiff Forest L. Stiers was and now is a citizen of the United States and a resident of the City of Phoenix, State of Arizona, and a member of Local Unon No. 2093, Millmen, Cabinet Makers, and Lumber Handlers, and the American Federation of Labor, affiliated with the plaintiff union United Brotherhood of Carpenters and Joiners of America and the American Federation of Labor. He was

and is an employee of defendant American Sash and Door Company, a corporation organized and operating under the laws of the State of Arizona.

8. All plaintiff unincorporated labor associations are organizations and associations of employees, including workingmen and women, in various trades, occupations and industries, who have from time to time assembled and associated together and are assembling and associating together for the purpose of organizing themselves into voluntary and unincorporated associations, for the purpose of forming, joining and assisting their organizations so formed, including the plaintiff labor organizations herein named, to bargain collectively through representatives of their own choosing, for purposes of mutual discussion and common consultation, and for dissemination of ideas and information to the membership and the general public, and to engage in concerted activities for the purpose of collective bargaining and otherwise dealing with their employers concerning hours of employment, rates of pay, working conditions or grievances of any kind relating to employment, and, in particular, the securing and obtaining of union-shop agreements providing for and insuring union security and protection, all for their mutual aid and protection, and for the purpose, by

these and other means, of protecting themselves and improving their working conditions, wages and employment relationships. All plaintiff unincorporated labor associations, both national and local, are of the type commonly regarded and denominated as labor unions.

9. Such national and international labor organizations, including the United Brotherhood of Carpenters & Joiners of America, and their local union affiliates, including Millmen, Cabinet Makers and Lumber Handlers Union No. 2093 and Phoenix Building and Construction Trades Council, affiliated with plaintiff American Federation of Labor and plaintiff Arizona State Federation of Labor, have had for many years in the past, and have at the present time, large numbers of union-shop or union-security agreements with various employers in a large number of trades and industries throughout the United States and throughout the State of Arizona. The use of union-shop or union-security agreements by such labor organizations is extremely widespread throughout the United States, as more specifically seen in an official publication of the United States Department of Labor known as Bulletin No. 829, entitled "Extent of Collective Bargaining and Union Status, January 1945," attached hereto as Exhibit "A" and made a part hereof as if

specifically set forth. Labor organizations affiliated with plaintiff Arizona State Federation of Labor, including plaintiff labor organizations herein, have approximately twenty-five hundred union-security agreements embracing approximately twenty-six thousand employees employed by various employers in various trades and industries throughout the State of Arizona. Such agreements are with employers engaged largely in non-agricultural industries, trades and services. Some of these agreements are with employers engaged in interstate commerce, and some are with employers engaged in intra-state commerce. Such labor organizations, as well as all other labor organizations which are a part of the American trade union movement, have traditionally entered into such union-shop agreements for purposes of security and protection and as a means of achieving equality of bargaining power, and the union-shop status is a traditional subject matter of collective bargaining in the state of Arizona, and throughout the United States and has been since the first days of the American trade union movement.

10. The obtaining of union-security provisions in collective bargaining agreements between labor organizations and employers now constitutes, and for over 100 years has constituted, an ultimate objective of the as-

sociation of working people, including the individual plaintiffs herein, into labor organizations and of such organizations themselves, including the plaintiff labor organizations. The securing of such agreements is a necessary and indispensable concomitant of the assemblage of working people, including the members of plaintiff associations and the individual plaintiffs herein, into labor organizations, and the right of labor associations, including plaintiff associations, to maintain and obtain such agreements, constitutes a necessary and indispensable element of their proper functioning and for the fulfillment of their purposes, as heretofore set forth.

11. Such union-shop or union-security agreements, including the agreements involved in this case hereinafter set forth, and the right to enter into them constitute valuable property and civil rights in plaintiffs, for the following additional reasons: The union-shop or union-security agreement constitutes the most effective means of obtaining and securing for plaintiff labor organizations, their members, and the individual plaintiff union members herein:

(a) Job security and protection from employer discrimination by removal of motives to discharge or demote because of union activity.

(b) Equality of bargaining power, with consequent betterment of working conditions by insuring labor a united front in the contest for a fair share of the joint products of capital and labor.

(c) Protection of working standards by preventing cut-throat wage competition by non-union employees.

(d) Equality of sacrifice by insuring that all who enjoy union wages and working conditions, achieved through years of struggle and deprivation, share in the costs of such benefits as members of the union rather than as "free riders."

(e) An increased measure of union responsibility for their obligations under collective bargaining agreements by providing a means of imposing disciplinary action.

(f) Elimination of jurisdictional strife by safeguarding against raids and other disruptive tactics of rival labor organizations, and

(g) An ability effectively to police collective bargaining agreements to the

end of obtaining full compliance on the part of the employees embraced thereunder, it being impossible to secure such full compliance where some employees are not union members and thus not subject to union laws and discipline.

(h) Labor-management cooperation by eliminating the suspicion and hostility which often characterizes the initial stages of employer recognition, thereby freeing union energies and resources for constructive cooperation rather than defensive sparring.

12. In the exercise of their rights of association, free assembly and free speech, and liberty of contract, and in the effectuation of their purposes as aforementioned, the members of labor organizations, including plaintiff labor organizations herein mentioned and their affiliates and the individual plaintiff members, have reached joint agreement upon their mutual obligations and operations and have set forth such agreements in written constitutions and by-laws, which constitutions and by-laws have been duly adopted by the members of such organizations and by such organizations. Such constitutions and by-laws constitute the laws of such organizations, define the duties and obligations of

the members of such organizations, including the members of plaintiff organizations, one to the other and to the organization of which they are members, and prescribed conditions and qualifications for admission to and continuance in membership in such organizations. A number of labor organizations affiliated with plaintiff, American Federation of Labor, and the plaintiff, Arizona State Federation of Labor, have adopted in their constitutions provisions requiring as a condition of membership that members agree to work only with persons who are also members of the particular labor organization, and that they continue so to agree as long as they desire to retain their affiliation with said labor organization.

Specifically, plaintiff United Brotherhood of Carpenters and Joiners of America and the plaintiff Local Union No. 2093 have duly adopted provisions in their constitutions specifying the duties and obligations of the members of such organizations, and the members thereof, including the individual plaintiff and individual defendants, have subscribed thereto, and requiring that all persons desiring to obtain or retain membership in such organization shall work only with persons who are also members of such union. Such provisions are now, and were at all times herein men-

tioned, in full force and effect, and specify as follows:-

> "No agreement shall be made or renewed with any firm granting the use of the label after April 1, 1916, unless all shops and mills of the firm have an eight-hour workday and employs only members of the United Brotherhood, except where dispensation has been granted by the General President upon application from the District Council or Local Union."

No such dispensation has been granted in the State of Arizona.

13. For many years a substantial amount of the work performed in the building and construction industry in the State of Arizona and in the mills manufacturing sash and doors has been done through members of labor organizations affiliated with various building trades Councils similar to the plaintiff Phoenix Building and Construction Trades Council and including such plaintiff Council. Throughout the years a practice and tradition has existed in such building trades industry and in mills manufacturing sash and doors resulting in benefits to building trades employers, building trades employees, and the general public, whereunder the labor organizations involved, including plaintiff

Phoenix Building and Construction Trades Council, undertake to train and supply the various skilled craftsmen and also to train veterans of World War II under the G. I. Bill of Rights and to require and enforce standards of competence and diligence among employees who are members of such labor organizations and to insure stability of wage scales during the life of individual contracts on construction projects. The foregoing was and is accomplished solely through the medium of union-shop agreements. The same practice and tradition is prevalent generally throughout the larger cities of the United States. Such practice and tradition has resulted in inestimable benefits to the public generally through stabilization of the industry and the making available of skilled help, and to employers and employees including the plaintiff and defendant employees herein mentioned. It would be impossible for such practice and tradition to continue or to be maintained in such building trades industries without the institution of the union-shop, closed-shop, or union-security agreement.

14. Membership in plaintiff labor organizations, including the plaintiff United Brotherhood of Carpenters and Joiners of America and plaintiff Local Union No. 2093, as well as all other labor organizations operating in the State of Arizona, is open to all qualified

persons, and such organizations freely admit qualified applicants into membership and impose no arbitrary or unreasonable requirements as a condition to membership. All of such labor organizations welcome and admit to their ranks all persons in the respective lines of work who can meet the requirements as to skill prescribed by such organizations and who will submit to the discipline and by-laws of such unions and who are of good character and agree to fulfill the contracts entered into by said unions.

15. No labor organization in the State of Arizona, including the plaintiff labor organizations herein, exercises or has any monopoly or control by reason of any union-shop, closed-shop, or union-security agreement, over the supply of labor in any trade, craft, occupation, or calling either in the State of Arizona generally or in any city or community within the State, including work involving the employment of millmen, cabinet makers and lumber handlers or other carpentry work.

16. The members of the plaintiff labor organizations and the officers, agents and employees of said organizations, the individual plaintiff, and the individual members of such organizations and of all other organizations of employee and all other labor organizations affiliated with plaintiffs American Federa-

tion of Labor and Arizona State Federation of Labor having members who are residents of the State of Arizona and are organized for the purpose of dealing with employers concerning hours of employment, rates of pay and working conditions, constitute a class situated similarly to the plaintiff labor organizations and the individual plaintiff union member in this case with respect to the matter heren alleged, and many of them are situated similarly to such plaintiffs, and are so numerous as to make it impossible or impractical to bring them all before this Court, but the rights and interests of all persons with respect to the things and matters in this complaint alleged are fairly represented by the plaintiff labor organizations and the individual plaintiff union member herein, and these plaintiffs have heretofore been authorized to represent said persons with respect to the matters in this complaint alleged and to bring this suit for and on behalf of themselves and all other organizations affiliated with the American Federation of Labor or with the plaintiff, Arizona State Federation of Labor, and persons, organizations and individuals similarly situated. Plaintiff labor organizations and the individual plaintiff union member herein bring this action on behalf of and as representative of the interests and rights of the individual members of such organizations who are citizens of the United

States and are residents of the State of Arizona.

17. At all times herein mentioned, the plaintiff, Ralph Henley, was and is an employer transacting business under the name of Ralph Henley Millwork, and was and now is engaged in the manufacturing of sash, doors, and fixtures in the City of Phoenix, State of Arizona, where he employs a number of mechanics and workmen. Said plaintiff is a resident of Maricopa County, State of Arizona. He procures a large part of the materials used in the manufacture of his products from states other than the State of Arizona, and sells a substantial portion of his products in states other than Arizona and in Arizona, and is engaged in interstate commerce.

18. The plaintiff, Ralph Henley, and numerous other employers similarly situated, who, as hereinafter alleged, have union-security agreements with labor organizations, have an interest in the maintaining and obtaining of such agreements for the reason that such agreements have resulted and presently result in stability of employment relationships, the promotion of harmony and cooperation as between employer and employees, the elimination of strife and discord both within the plant and as between rival

labor organizations, the making available of sufficient skilled, competent and experienced artisans through the training of apprentices, the stabilization of employees' compensation by the predetermination of applicable wage rates, all having the effect of and actually resulting in increasing production; in addition, the making and observance of such union-security agreements is an indispensable condition to the securing of a license to use a union label on manufactured products and thereby facilitating the manufacture and sale of said products and the use thereof in the State of Arizona and in other states.

III

THE DEFENDANTS

19. At all times herein mentioned, the defendant American Sash & Door Company is and was a corporation duly organized and engaged in doing business in the State of Arizona and was and is engaged in the manufacture of sash and doors in the City of Phoenix, State of Arizona, where it employs a number of workmen skilled in the carpentry trade. Said defendant procures a substantial part of the materials used in the manufacturing of its products from states other than the State of Arizona, and sells a substantial portion of said products in states other than the

State of Arizona and is engaged in inter-state commerce.

20. That at all times herein mentioned the defendant D. A. Brewer was and is a resident of Maricopa County, State of Arizona and was and is engaged in concrete construction work such as foundations, floors, driveways, sidewalks, etc., in connection with the construction of Veterans Housing, and other Housing Projects, in the city of Phoenix, county of Maricopa, State of Arizona. In connection with such business, he employs workmen who are members of the plaintiff Phoenix Building and Construction Trades Council. Such defendant obtains his materials used in connection with his construction business through purchase within the State of Arizona, and the construction jobs which he undertakes are all within the State of Arizona, and said defendant is engaged in intrastate commerce.

21. At all times herein mentioned, defendant W. B. Stevens was and now is an employee of defendant American Sash & Door Co., a corporation, and prior to January 1, 1947, was a member in good standing of plaintiff Local Union No. 2093.

22. At all times herein mentioned, defendant Edward L. Beard was and now is an

employee of defendant employer D. A. Brewer, and prior to December 1, 1946, was a member in good standing of plaintiff Phoenix Building and Construction Trades Council.

23. At all times herein mentioned, the defendant James R. Miller was and is now an employee of plaintiff employer Ralph Henley, and prior to January 1, 1947, was a member in good standing of plaintiff Local Union No. 2093.

23a. All of the defendants named in paragraphs Nos. 19 through 23 are joined as defendants because they are parties to collective bargaining agreements with various of plaintiff labor organizations, or because they are individuals whose employment status is affected by reason of such agreements, as hereinafter more specifically set forth. No relief of any nature is asked or sought as to such defendants, other than a declaration of rights, duties, obligations and status under existing or future union-security agreements.

24. The defendant John L. Sullivan is the duly elected, qualified and acting Attorney General of the State of Arizona and is authorized and empowered, and it is his duty, to take all steps necessary, including the institution of civil or criminal proceedings, to enforce all laws of the State of Arizona, includ-

ing the Constitution of that State and amendments thereto and the aforesaid anti-closed-shop amendment. Such defendant has general supervisory and directory powers over all county and other prosecuting attorneys within the State of Arizona whose functions it is to enforce the laws of the State.

IV.

THE UNION-SECURITY AGREEMENTS INVOLVED HEREIN

25. Several weeks prior to November 4, 1946, all the planing mill employees, except office workers, shipping clerks, and superintendents, employed by the defendant American Sash & Door Company in the operation of its plant in Phoenix, Arizona, such employees constituting an appropriate bargaining unit, selected plaintiff Local Union No. 2093 as their bargaining representative, and said Local Union No. 2093 has at all times since been the duly selected and exclusive bargaining representative of such employees in such bargaining unit.

On the 4th day of November, 1946, the said defendant company entered into a collective bargaining agreement with said plaintiff Local Union No. 2093, which agreement specified the wages, hours, and working condi-

tions of the employees employed by said plaintiff company in the aforesaid bargaining unit. Such agreement, by virtue of a supplemental agreement made and executed on the same date as the original, is effective and in force until January 7, 1948. Among other provisions relating to working conditions, such agreement contains a provision providing that, subject to the right of the Company to determine the competency of all persons hired,

> "Article III. The company agrees to have in their employ only employees in good standing with the Union." . . . "Employers agree that any employee who fails to maintain membership in the Union as provided in Section I above shall be discharged upon proper notice given by the Union."

Copy of said agreement and supplement thereto is attached hereto as Exhibit 2 and is hereby referred to and made a part hereof as though set out at length.

26. For more than one year prior to November 25, 1946, there has existed an agreement between defendant D. A Brewer and plaintiff Phoenix Building and Construction Trades Council providing for the wages, hours, and working conditions of all em-

ployees except clerical and supervisory employees employed by the defendant D. A. Brewer in his construction business. Among other provisions, said agreement contains a provision relating to union security identical to the union-security provision set forth in Exhibit 2 herein, and requiring said defendant to employ only members of the Phoenix Building and Construction Trades Council in the operation of his business, and to discharge any such employees who do not maintain their membership. Such agreement was last renewed on August 4, 1946 and is, by its terms, to remain in full force and effect until August 4, 1947, after which it is automatically renewed from year to year, subject to a thirty-day's notice of cancellation.

27. Several weeks prior to December 12, 1946, all the planing mill employees, except office workers, shipping clerks, and superintendents, employed by plaintiff Ralph Henley Millwork in his operations at his plant in Phoenix, Arizona, such employees constituting an appropriate bargaining unit, selected plaintiff Local Union No. 2093 as their bargaining representative, and said Local Union No. 2093 has at all times since been the duly selected and exclusive bargaining representative of such employees in such bargaining unit.

On December 12, 1946, the said plaintiff Ralph Henley, transacting business under the name of Ralph Henley Millwork, entered into a collective bargaining agreement with said Local Union No. 2093 containing the identical terms and conditions as those set forth in Exhibit 2, and heretofore referred to in paragraph 25. Such agreement is effective and in force until January 7, 1948.

28. At all times subsequent to May 1, 1913, plaintiff Arizona State Federation of Labor has been and now is the sole owner of the Arizona Labor Journal, a newspaper of general circulation, published, and distributed by it in the State of Arizona for the purpose of defining, explaining, advocating and defending the aims and purposes of the labor movement, one of which is the establishment, operation and maintenance of closed-shop, union-shop, or union-security agreements; that at all times herein mentioned said plaintiff, acting as an employer, has employed only persons who were union members, and has operated under closed-shop agreements in all employments relating to the said newspaper, and is now so operating. It is the permanent policy of such plaintiff not to operate said newspaper in any other manner. Such plaintiff has no desire to operate its said newspaper in any other manner; it does not desire to voluntarily retain in its employment

any employee who does not fully maintain his membership in good standing in his respective union. It proposes to deny employment to any person applying therefor who is not a member of his respective union and in good standing therein, and, subsequent to December 1, 1946, has so denied such employment to at least one applicant who was not a union member on that ground alone. In this respect such plaintiff alleges that its business, property, aims, and purposes would be unsafe and its operations jeopardized in the hands of persons who are not union men in good standing.

29. The collective bargaining agreements heretofore set forth were entered into by the respective parties voluntarily, and it is the desire of all parties to such contracts to continue such contracts in existence, if it is legal for them to do so.

V.

THE ANTI-CLOSED-SHOP AMENDMENT

30. On or about the 3rd day of July, 1946, there was presented to the Hon. Dan Garvey, Secretary of State of the State of Arizona, an initiative petition proposing to amend the Constitution of the State of Arizona, under

the provisions of Article IV, Part 1, and Article XXI, Constitution of Arizona; that said Dan Garvey, as said Secretary of State, determined that, said petition contained the names of 31,618 electors, and constituted a number equal to or in excess of 15 percent of the total number of votes cast for all candidates for Governor at the last preceding general election in the State of Arizona in 1944; that said Dan Garvey assigned said proposed constitutional amendment a number on the ballots to be voted at the general election on November 5, 1946, to-wit: No. 106 — YES, No. 107 — NO, and formulated a ballot title for said amendment; and thereupon, within the time prescribed by law certified said proposed amendment, ballot title and numbers, to the Clerks of the Boards of Supervisors of the several counties of Arizona, for printing on the ballots to be used at said general election on November 5, 1946; that said proposed amendment, ballot title and numbers were printed on the ballots used at the general election on November 5, 1946; that the total registered voters eligible to vote were 197,808; the vote cast at said election was 125,987 voting on said amendment was 111,432; voting for said amendment was 61,875; voting against said amendment was 49,557; said vote was canvassed on the 25th day of November 1946, by the Hon. Sidney P. Osborn, Governor of Arizona, the Hon. R. C.

Stanford, Chief Justice of the Supreme Court, and the Hon. Dan Garvey, Secretary of State of the State of Arizona, as provided by Section 13, Part 1, Article IV and Article XXI, Constitution of Arizona; and on the 25th day of November, 1946, the Hon. Sidney P. Osborn, Governor of Arizona, pursuant to the provisions of Section 5, Part 1, Article IV and Article XXI, Constitution of Arizona, issued his proclamation, declaring said amendment to be adopted and declared that it then became law, and a part of the Constitution of Arizona, as provided by Section 5, Part 1, Article IV; and Article XXI of the said Constitution; said amendment is commonly known as "The Right To Work Amendment," "The Right To Starve Amendment," and "Anti-Closed Shop Amendment"; at all times herein it is referred to and described as the "Anti-Closed Shop Amendment." That the text of said amendment is as follows, to-wit: "No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the State or any subdivision thereof, or any corporation, individual or association of any kind enter into an agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization."

31. The plaintiffs herein further assert

that, although the aforesaid constitutional amendment purports and is intended to outlaw existing and future closed-shop, union-shop, or union-security agreements, nevertheless the said amendment is not operative and cannot be applied against said plaintiffs, or other parties to union-shop, closed-shop, or union-security agreements, or desiring to enter into said union-shop, closed-shop, or union-security agreements, for the reason that said constitutional amendment is not self-executing and requires enabling legislation to be enacted by the Legislature of Arizona before it can become operative.

VI.

THE CONTROVERSIES HEREIN

32. Following the effective date of said anti-closed-shop amendment, the defendant John L. Sullivan, Attorney General of the State of Arizona, officially and publicly stated that:

> The so-called 'right to work amendment' at all times subsequent to the 25th day of November, 1946, is the law of our State and has been made such by the constitutional amendment adopted by the popular vote of the people of the State of Arizona approving the same. That he as the

duly elected, qualified, and acting Attorney General of the State of Arizona has taken oath to enforce the constitution of the State of Arizona including the so-called 'right to work amendment'; that in the light of the foregoing it is his duty as Attorney General to enforce this amendment, and the duty of the citizens of Arizona, good and bad, Union, and non-union, employer and employee, to recognize, conform to and obey the law of the amendment. And that if there is any attempt on the part of any person or persons in the State of Arizona to violate said amendment, or to conspire to violate said amendment, it is his duty to exercise all the power vested in his office, civil, criminal, or equitable to enforce the provisions of said amendment and to prosecute actions for the violation thereof, and that he proposes to do so in all cases brought to his attention, and will require action to be taken for the enforcement of said law by the County Attorney of the County, or Counties, wherein violations occur.

33. The said defendant Attorney General at all times since the effective date of said anti-closed-shop amendment has asserted and now asserts that such amendment is self-executing, does not require enabling legislation, and is enforceable through either civil or

criminal proceedings brought by such defendant on behalf of the State, the available civil remedies being (1) suits in equity to enjoin violations or attempted violations, (2) suits at law to recover damages on behalf of aggrieved persons, and (3) suits at law by way of quo warranto or otherwise to revoke corporate charters or licenses of corporations to do business within the State when such corporations have violated said amendment, and the available criminal remedy being a proceeding under criminal code Section 43-1101, A.C.A. 1939, against employers and unions or union officers who conspire together to violate said amendment.

34. On various occasions following the effective date of said anti-closed-shop amendment, the said defendant Attorney General has threatened and continues to threaten to institute civil or criminal proceedings as aforesaid against any and all persons violating or attempting to violate or conspiring to violate said anti-closed-shop amendment, including specifically against all of the plaintiffs herein and the defendants American Sash & Door Company and D. A. Brewer.

35. On January 20, 1947, defendant W. B. Stevens in writing refused to pay his monthly dues as required by the rules and laws of plaintiff Local Union No. 2093, al-

though said plaintiff was at all times willing to receive such dues and to retain said defendant as a member of said plaintiff Local Union. Thereafter, on January 20, 1947, said defendant W. B. Stevens, by reason of such default in payment of dues, lost his status as a member in good standing of Local Union No. 2093 under the laws of that organization. Thereafter, on February 7, 1947, said plaintiff Local Union No. 2093, in compliance with the terms of the agreement mentioned in Paragraph No. 25, *supra*, gave due notice to the defendant American Sash & Door Co. that the said defendant W. B. Stevens had not retained his membership in said Local Union No. 2093, and requested that said defendant W. B. Stevens be discharged pursuant to the terms of said agreement. Notwithstanding the provisions of said agreement requiring it to discharge such defendant under the foregoing circumstances, the said defendant American Sash & Door Co. refused to discharge said defendant W. B. Stevens and predicated such refusal upon the following grounds: (1) the threats of the defendant Attorney General, as set forth in Paragraphs Nos. 32, 33 and 34 herein, and (2) threats by the defendant W. B. Stevens to institute and prosecute actions against said defendant American Sash & Door Co. for equitable relief and for whatever damages may be caused him by the enforcement of said agreement,

said defendant W. B. Stevens claiming a right under the laws of Arizona to institute such proceedings. In addition, the said defendant has stated that it will not, under any circumstances while the said amendment is in effect, renew or discuss renewal of the said agreement upon its expiration. In addition, numerous other employers throughout the State of Arizona, situated similarly to employer American Sash & Door Co., have threatened to refuse to observe or comply with existing union-security agreements for the same reasons as asserted by said defendant, and such employers have likewise refused, or threatened to refuse, to renew or discuss renewal of existing union-security agreements upon their expiration if the amendment is operative.

36. For more than three months prior to December 1, 1946, the defendant Edward L. Beard refused to pay his monthly dues as required by the rules and laws of plaintiff Phoenix Building and Construction Trades Council, although said plaintiff was at all times willing to receive such dues and to retain said defendant as a member of said Phoenix Building and Construction Trades Council. Thereafter, on December 1, 1946, said defendant Edward L. Beard, by reason of such default in payment of dues, lost his status as a member in good standing of Phoe-

nix Building and Construction Trades Council under the laws of that organization. Thereafter on February 7, 1947, said plaintiff Phoenix Building and Construction Trades Council, in compliance with the terms of the agreement mentioned in Paragraph No. 26, *supra*, gave due notice to the defendant D. A. Brewer that the said defendant Edward L. Beard had not retained his membership in said plaintiff Phoenix Building and Construction Trades Council, and requested that said defendant Edward L. Beard be discharged pursuant to the terms of said agreement. Notwithstanding the provisions of said agreement requiring it to discharge such defendant under the foregoing circumstances, the said defendant D. A. Brewer refused to discharge said defendant Edward L. Beard and predicated such refusal upon the following grounds: (1) the threats of the defendant Attorney General, as set forth in Paragraphs Nos. 32, 33 and 34 herein, and (2) the threats by the defendant Edward L. Beard to institute and prosecute actions against said defendant D. A. Brewer for equitable relief and for whatever damages may be caused him by the enforcement of said agreement, said defendant Edward L. Beard claiming a right under the laws of Arizona to institute such proceedings.

37. On January 16, 1947, defendant

James R. Miller refused in writing to pay his monthly dues as required by the rules and laws of plaintiff Local Union No. 2093, although said plaintiff was at all times willing to receive such dues and to retain said defendant as a member of said plaintiff Local Union. Thereafter, on January 16, 1947, said defendant James R. Miller, by reason of such default in payment of dues, lost his status as a member in good standing of Local Union No. 2093 under the laws of that organization. Thereafter, on February 7, 1947, said plaintiff Local Union No. 2093, in compliance with the terms of the agreement mentioned in Paragraph No. 27, *supra*, gave due notice to the plaintiff Ralph Henley Millwork that the said defendant James R. Miller had not retained his membership in said plaintiff Local Union No. 2093, and requested that said defendant James R. Miller be discharged pursuant to the terms of said agreement. Notwithstanding the provisions of said agreement requiring it to discharge such defendant under the foregoing circumstances, the said plaintiff Ralph Henley Millwork refused to discharge said defendant James R. Miller and predicated such refusal upon the following grounds: (1) the threats of the defendant Attorney General, as set forth in Paragraphs Nos. 32, 33 and 34 herein, and (2) the threats by the defendant James R. Miller to institute and prosecute actions

against said plaintiff Ralph Henley Millwork for equitable relief and for whatever damages may be caused him by the enforcement of said agreement, said defendant James R. Miller claiming a right under the laws of Arizona to institute such proceedings.

VII.

UNCONSTITUTIONALITY OF AMENDMENT

38. Plaintiffs herein and others similarly situated believe and assert that the said purported law hereinabove referred to and known as the "Anti-Closed-Shop Amendment" is void, unenforceable, unconstitutional and of no legal effect whatsoever for the following reasons, to-wit:

(1) Said alleged law prevents individuals and members of labor organizations, including the individual plaintiff union members herein and the other individual members of the plaintiff labor organizations herein, from accomplishing the ultimate purpose and objective of such individuals in assembling and associating together into labor organizations and in exercising the rights of speech, press and petition while so assembled, or as a part of such assemblage, and thereby denies, impairs and previously restrains the exercise by

such individuals and organizations of their rights of assembly, speech, press and petition, established under Sections 1, 2, 3, 4, 5, 6, 9, 13, 17, 25, of Article II, Constitution of Arizona, and guaranteed under the First Amendment to the United States Constitution as protected against invasion by the State by the Fourteenth Amendment. Enforcement of the said law will deprive the plaintiffs of the benefits and privileges of mutual association and assembly and of the mutual contracts and obligations heretofore assumed by members of the plaintiff organizations in such mutual association and assembly established under the aforementioned Sections of Article II, Constitution of Arizona: and as guaranteed by such First and Fourteenth Amendments, and would impair and restrain the exercise of rights alleged in Paragraphs Nos. 10 through 12, *supra*, all in violation of the said First Amendment as protected by the Fourteenth Amendment and Section 5, Article II, Constitution of Arizona.

(2) Said alleged law impairs and invalidates any provision in any collective bargaining agreement between any employer and any labor organization which provides that membership in such labor organization shall be a condition of employment, and, in particular, invalidates and impairs the obligations of the existing contracts entered into by the

plaintiffs Local Union No. 2093 and Phoenix Building and Construction Trades Council both prior and subsequent to the time such amendment became effective, as hereinbefore specifically set forth, and further, said alleged law makes inoperative, ineffective, and invalid, and otherwise impairs the obligations and agreements mutually and voluntarily assumed by and among members of labor organizations, including plaintiff labor organizations and their members, as expressed in their constitutions and by-laws, and in particular as is expressed in the constitution and by-laws of the plaintiff United Brotherhood of Carpenters and Joiners of America hereinabove referred to, all in violation of Section 25, Article II, Constitution of Arizona; and of Article I, Section 10, of the Constitution of the United States providing that no State shall make laws impairing the obligations of contracts.

(3) Said alleged law prevents labor organizations and their members, including plaintiff labor organizations and their members and the individual plaintiff herein, from discussing, negotiating, bargaining for, and entering into or renewing mutually agreeable collective bargaining agreements containing union-shop or union-security provisions with employers engaged in either interstate or intrastate commerce, including such employers

who are parties to this case, and from using such union-shop or union-security agreements as a means of maintaining present valid and existing property rights, in seniority, apprenticeship, training, insurance, working rules, safety rules, etc., and in achieving security, protection and an equality of bargaining power. Such alleged law prevents such employers, including plaintiff Ralph Henley Millwork and defendant American Sash & Door Co., from discussing, negotiating, bargaining for or entering into mutually agreeable bargaining agreements, and thereby such law has withdrawn a very important and traditional subject matter of collective bargaining from the subject matters concerning which employers are under a duty to bargain under the National Labor Relations Act. Such law has and will in the future precipitate labor disputes and disturbances which have and will interrupt the free flow of, and otherwise affect, commerce between the States, all in conflict with the provisions of the National Labor Relations Act, Title 29, Sections 151 to 166, U. S. Code Annotated, and violative of the public policy and law of the United States with respect to employers or employees engaged in interstate commerce or engaged in occupations affecting interstate commerce as laid down in Section 151 of said Code. Such law is in conflict with and violates and seeks to abrogate rights and privi-

leges conferred on employees, members of labor organizations and labor organizations, including the individual plaintiffs in this case and the plaintiff labor organizations and ther members by Sections 157, 158 and 159 of said Code aforesaid, and it is in conflict with, violates, and seeks to abrograte duties and obligations imposed upon employers, including the employers involved in this case, under such National Labor Relations Act, particularly Section 158 thereof, all in violation of Article VI of the United States Constitution, and Section 3, Article 2, Constitution of Arizona, providing that the laws of the United States shall be the supreme law of the land.

(4) The said law prevents labor organizations and employers, including the plaintiff labor organizations and the employers in this case, from negotiating, entering into and renewing mutually agreeable collective bargaining agreements containing union-shop or union-security provisions, or requiring employees to become and remain members of labor organizations as a condition of employment, and thereby deprive such labor organizations and their members and employers, including the plaintiff labor organizations, plaintiff employer and plaintiff individual union members herein as representative of a class, of property rights and liberties secured, protected and guaranteed against infringe-

ment by Sections 1, 2, 3, 5, 6, 9, 13, 17, 25, of Article II, Constitution of Arizona and by the Fourteenth Amendment to the United States Constitution, and in particular of the right and liberty freely to contract protected as a property right under Section 25, Article II, Constitution of Arizona, and under the due process clause of the Fourteenth Amendment to the United States Constitution. The said alleged law denying plaintiff labor organizations and plaintiff employer and the individual plaintiff of liberties and of civil and property rights, as heretofore set forth, is arbitrary and unreasonable and constitutes an improper and unlawful exercise by the State of Arizona of its police power. Said law is without rational basis, is not justified by existing circumstances, and is not in the public interest. That there was and is no clear and present danger, or substantive evil to the people of Arizona, her institutions, or the individual liberties of its residents within the rule of reason, to warrant or justify the indiscriminate outlawing of the union-shop, closed-shop, or union-security contracts, either those presently existing or the negotiation of such contracts in the future, or the discrimination against union employers and union workers in favor of non-union employers and employees. Historically, in the years 1917 to 1921, inclusive, there were very few persons working under closed-shop or union-

shop conditions in the State, and as a consequence there occurred repeated strikes, accompanied by death, violence, destruction of property, unlawful deportation of more than one thousand men from their homes into desert areas of sister States; jails and courts were filled with strikers or their assailants; soldiers patrolled the streets of many Arizona cities; armed citizens representing opposing economic beliefs faced each other; the Legislature was called upon to pass, and it did pass, anti-sabotage, anti-syndicalism; anti-Red-Flag bills, and measures of like import; in a word industrial anarchy prevailed. In the years following 1921, the use of union-security agreements became more and more prevalent, and as a consequence industrial peace prevailed throughout the State; during the years 1941 to 1946, inclusive, no strikes occurred in any war industry during the war; no violence of any significance in connection with a labor dispute occurred in any industry during said years, or until after the enactment of said amendment. The said law imposes hardships in disproportion to any possible public benefit; and the interests of the public generally are not such as to require or justify the enactment of said law. For the foregoing reasons the said law is in violation of Article II, Constitution of Arizona, and of the Fourteenth Amendment to the United States Constitution.

(5) The said alleged law, by prohibiting agreements between labor organizations and employers which contain union-shop or union-security provisions, discriminates solely against the class of members of labor organizations, and in particular against plaintiff labor organizations and their members and and the individual plaintiff herein on the one hand and in favor solely of non-members of labor organizations and of the individual employee defendants herein on the other. Such alleged law constitutes class legislation passed in the interest solely of the class of non-union employees and not in the interest of the public generally. The said law is further discriminatory in that it prohibits labor organizations alone out of all other classes of organizations, societies, or voluntary associations established for the purpose of bringing cultural, social, economic or spiritual benefits to their members, from attempting by voluntary arrangement to require all who obtain the benefits of union activity to contribute to the support and maintenance of that union, and this in spite of the fact that such unions are required, under federal law in respect to interstate industries, to distribute benefits achieved through the process of collective bargaining equally to all employees within the bargaining unit and to represent all within such unit on the same basis regardless of whether such employees are or are not union

members. Accordingly, such alleged law is in violation of the provisions of Section 13, Article II, Constitution of Arizona, and the provisions of the Fourteenth Amendment to the United States Constitution requiring that no State shall deny any person within its jurisdiction the equal protection of the laws.

(6) Plaintiff employer alleges that the said alleged law is unconstitutional, void and unenforceable for the reasons heretofore set forth and for the following additional reasons: It denies such plaintiff employer the right to employ workmen upon such terms as may be agreed to between the employer and the employees either acting individually or through their duly selected collective bargaining agencies where an equality of bargaining power has been established. The right of an employer to hire or deny employment to any person without arbitrary interference by law is an inherent, basic and fundamental right guaranteed to employers by the various constitutional provisions heretofore referred to in the Federal and State Constitutions. Such right is incident to the freedom of the individual and as such is a privilege and right which may not be arbitrarily interfered with. The said anti-closed-shop amendment unlawfully and arbitrarily deprives said plaintiff employers of property rights incident to and

inherent in their collective bargaining agreements as heretofore alleged.

VIII.

GROUNDS FOR EQUITABLE AND DECLARATORY RELIEF

39. Failure by employer plaintiff and defendants and others similarly situated to observe agreements because of the said "Anti-Closed-Shop Amendment" and enforcement of such amendment against such plaintiffs and others similarly situated, as threatened by the defendant Attorney General, has and will deprive the plaintiff labor organizations, the individual plaintiff employee as representative of a class, and others similarly situated, of the benefits, advantages and privileges of mutual association and assembly and of the mutual obligations heretofore assumed by members of such plaintiff organizations in such mutual association and assembly. Such acts have and will deprive such plaintiff labor organizations, the individual plaintiff as representative of a class and all the members of such plaintiffs of the benefits, rights, privileges and immunities heretofore received and now possessed under contracts made by and with plaintiff labor organizations and by and among members thereof, and have and will prevent such plaintiffs and all members

of such plaintiffs, from engaging in all of the activities hereinbefore set forth and from securing the benefits, objectives and purposes of their mutual association and assembly as hereinabove set forth, and have and will irreparably injure and eventually destroy the plaintiff labor organizations. The acts of said defendants as performed, threatened and intended aforesaid will interfere with and prevent and cause a cessation and denial of collective bargaining relations between the plaintiff labor organizations and employers and all others in the State of Arizona similarly situated, and has and will interfere with and prevent the renewal and continuance of contracts and agreements now in effect between the said plaintiffs and employers and others, including contracts which by their terms provide for automatic renewal. Such acts will cause plaintiff labor organizations and others similarly situated to lose present and prospective members and to lose considerable finances because of an inevitable decrease in amount of dues collected, will imperil the security of such labor organizations and their members, including the individual plaintiff as representative of a class, and will prevent plaintiff labor organizations and the individual plaintiff employee as representative of a class, and others similarly situated from enjoying the benefits of the National Labor Relations Act and from achieving an

equality of bargaining power. Such acts will imperil and destroy the entire process of collective bargaining in the State of Arizona and will inevitably interfere with and disrupt both interstate and intrastate commerce in wide areas of the State. Such acts have and will imperil and disrupt harmonious relationships existing between plaintiff labor organizations and others similarly situated and employers, all to the irreparable injury of plaintiff labor organizations, their members, and the individual plaintiff employee as representative of a class, and others similarly situated and of plaintiff employer, and to the great prejudice of the general public. Furthermore, enforcement of the amendment by the Attorney General and by individuals situated similarly to defendants Stevens, Beard and Miller will result in a great multiplicity of suits. All of the foregoing will cause irreparable damage to plaintiffs, and such damages will ensue unless the defendant Attorney General is restrained as hereinafter prayed.

40. By reason of the said amendment there has arisen a grave question concerning the rights, status and legal relations of the parties to the existing agreements hereinbefore set forth and as to the right of plaintiffs and others similarly situated to enter into or renew agreements containing union-shop, closed-shop, or union-security provisions; that

the rights, status, duties and obligations of the parties to said existing agreements have been made uncertain and insecure by reason of said amendment and by the position taken by the defendant employers, individual defendants, and defendant Attorney General thereunder; that it is necessary to obtain an adjudication from this Court setting forth the rights, status, duties and obligations of such parties in respect to such agreements and in respect to future agreements in order to avoid widespread confusion, disruption of employment, Veteran's Housing, public and private projects, and the production and sale of the products of Arizona in interstate commerce, and interference with existing rights; that there exists an actual controversy between the parties to the existing agreement as herein alleged and between the plaintiff labor organizations and employers and the Attorney General of the State and the individual defendants and defendant employers, as to the meaning, construction, application, operation, legality and constitutionality of the said Anti-Closed-Shop Amendment.

41. The plaintiffs and defendants are joined in this action under the provisions of Sec. 21-512 A.C.A. 1939, for the reason that rights are asserted for relief arising out of a series of transactions under which a ques-

tion of law common to all of them arises in the action.

42. This cause involves matters of great public interest, and issues which should promptly be decided to avoid industrial conflict, work stoppages on veteran's housing, and other public and private construction projects, and in other industry; and to avoid hardship and losses to the public as well as to the parties. Pursuant to the provisions of Sec. 21-1217 A.C.A. the cause should be advanced on the calendar in order that a speedy hearing and determination may be had.

WHEREFORE, PLAINTIFFS RESPECTFULLY PRAY:

1. For judgment pursuant to the Arizona Declaratory Judgment Act, (Article 7, Chapter 27, A.C.A. 1939), declaring the rights, status and other legal relations of the plaintiffs and others similarly situated under the said "Anti-Closed-Shop Amendment," and declaring that said Amendment is void, unconstitutional and unenforceable, and is in violation of the Constitution of the State of Arizona and the Federal Constitution as hereinbefore specifically and especially asserted, and in addition specifically declaring:

(a) that as regards the existing agreement in respect to union security between the defendant American Sash and Door Company, a corporation, and the plaintiff labor organization as hereinbefore specified, said agreement is legal, valid and enforceable between the parties thereto notwithstanding the said Anti-Closed-Shop Amendment or "Right to Work Amendment"; that defendant W. B. Stevens, and others similarly situated may be duly discharged solely for failure to maintain union membership pursuant to said agreement and have no cause of action against either the defendant employer or plaintiff labor organization parties thereto; that the parties plaintiff have a constitutional and lawful right, notwithstanding the provisions of said Anti-Closed-Shop Amendment or "Right to Work Amendment" to continue, extend, or renew said agreement at its expiration date if they so desire;

(b) that as regards the existing agreement in respect to union security between defendant D. A. Brewer, an individual, and the various plaintiff labor organizations as hereinbefore specified, said agreement is legal, valid, and enforceable between the parties thereto notwithstanding the Anti-Closed-Shop or "Right to Work Amendment"; that defendant D. A. Brewer may

duly discharge Edward L. Beard, and others similarly situated, solely for failure to maintain union membership pursuant to said agreement; that said Edward L. Beard, and others similarly situated have no cause of action against either the defendant employer or plaintiff Labor organizations parties thereto; that the parties have a Constitutional and lawful right notwithstanding the provisions of said Anti-Closed-Shop or "Right to Work Amendment" to continue, extend or renew said agreement at its expiration date, if they so desire;

(c) that as regards the existing agreement in respect to union security between the plaintiff Ralph Henley, doing business as Ralph Henley Millwork and the plaintiff organization as hereinbefore specified, said agreement is legal, valid, and enforceable between the parties thereto notwithstanding that it was entered into subsequent to the effective date of the said Anti-Closed-Shop or "Right to Work Amendment"; that defendant James R. Miller, and others similarly situated, may be duly discharged for failure to maintain union membership pursuant to said agreement and have no cause of action against either the employer or plaintiff labor organizations parties thereto; that the parties plaintiff have a

Constitutional and lawful right notwithstanding the provisions of said Anti-Closed-Shop or "Right to Work Amendment" to continue, extend, or renew such agreement at its expiration date if they so desire;

(d) that as regards the existing agreements between the Arizona State Federation of Labor, as an employer in relation to the publication of its newspaper Arizona Labor Journal, and the plaintiff labor organizations as hereinbefore specified affiliated with said plaintiff Arizona State Federation, that it may maintain and operate said paper on a Union shop, Closed shop, basis as long as it shall be published, said agreements are valid and enforceable between the parties thereto notwithstanding the Anti-Closed shop or "Right to Work Amendment"; that no proceedings may be lawfully instituted or prosecuted by John L. Sullivan, as Attorney General of Arizona, or by any public prosecutor or law enforcement officer under his general supervision, either civil, criminal, or equitable to require the said plaintiff Arizona State Federation of Labor to conform to the provisions of the aforesaid amendment either to employ or to maintain in employment any person or persons who is not in good stand-

ing in the Union having jurisdiction over the work to be performed.

2. That the Court shall issue an injunction, upon the entry of judgment for plaintiffs, against the defendant John L. Sullivan individually and in his official capacity, and against all other parties represented as a class by said defendant, being the local prosecuting officials of all the counties of the State of Arizona and all other officials of Arizona who would have authority to take any action towards the enforcement of said law, and that such persons and defendants be enjoined and restrained from taking any steps whatsoever in court or out of court looking to the enforcement of the provisions of said law and specifically from bringing or continuing any prosecutions for alleged violations of said law by reason of any person, including plaintiffs and defendants American Sash & Door Company, and D. A. Brewer and others similarly situated herein, continuing to observe provisions of existing collective bargaining agreements in respect to union security or requiring membership in a labor organization as a condition of employment or because of entering into any such collective bargaining agreements containing such provisions and from in any way interfering with the activities of the plaintiffs and the

class represented by them by reason of any of the provisions of said law.

3. For such other and further equitable relief as the plaintiffs may show themselves entitled to have, and

4. For all costs in this proceeding.

(Signature of counsel for plaintiffs)

(Verified by A. E. Williams, Feb. 12, 1947)

(Exhibit A, in pamphlet form, enclosed in envelope inside back cover)

EXHIBIT 2

November 4, 1946

SUPPLEMENTAL AGREEMENT

1. It is hereby agreed that the following wage scale shall prevail, effective October 10, 1946.

Classification	Minimum Wage Per Hour
Cabinet Shop Layout	$1.50
Frame Dept. Layout	1.50
Stickerman	1.50

Benchman	1.50
Stock Cutter	1.25
Shaper and Bandsawyer	1.50
Door Layout	1.50
Bar Nailers	1.12
Chisel, Mortiser and Tenoner	1.18
Rip Saw, Planer and Jointer	1.18
Put Up Man	1.06
Frame Nailer	1.12
Sanders, Drum and Belt	1.12
Materialmen	1.01

Premium men shall receive an increase of 10c per hour.

2. It is hereby agreed that either party may reopen the agreement for negotiations for a new wage scale on and after July 1, 1947.

3. It is hereby agreed that in all other respects the agreement between the parties shall be and hereby is extended until January 7, 1948.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year at the head of this instrument.

District Council of Carpenters
Maricopa County and Vicinity
By J. H. McNEILL

United Brotherhood of Carpenters
and Joiners of America, Int. Union
By JOHN MURRAY

AMERICAN SASH & DOOR CO.
By E. PROCTOR.

Millmen, Cabinet Makers and Lumber
Handlers Union No. 2093.
By W. C. POOR

AGREEMENT

THIS AGREEMENT, made and entered into this the 4th day of November, 1946, by and between AMERICAN SASH & DOOR CO., hereinafter referred to as the Company, and the MILLMEN, CABINET AND LUMBER HANDLERS UNION NO. 2093, chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, hereinafter referred to as the Union, and the same is applicable to the planing mills of the Company located in Phoenix, Arizona, and vicinity.

It is understood that this agreement is intended as a Master Agreement and has been negotiated with the mill owners in the Association known as competitors, and that it is a true copy of their agreement made applicable to the above mentioned company.

I

Purpose of Agreement and Jurisdiction of Union

The general purpose of this agreement is, in the mutual interest of the Company and its employees, to provide for the operation of the planing mill hereinabove mentioned under conditions which will further to the fullest extent possible the safety of the employees, economy of operation, quality and quantity of output, elimination of waste, cleanliness of the plant, and protection of property. It is recognized by the parties to this agreement that it is to their mutual advantage to co-operate fully, individually and collectively, for the advancement of said conditions.

The parties hereto desire to establish the standards of hours of labor, wages, and other conditions under which the employees shall work for the Company during the term of this agreement and desire to regulate mutual relations between the parties hereto.

Local Union No. 2093 is a regularly constituted union with jurisdiction over all millmen cabinet makers, bench men, sash, door and screen men, as well as lumber clerks, checkers and handlers for the area comprising the City of Phoenix and vicinity, and whereas Local No. 2093 is affiliated with the Maricopa County Carpenters District Council, the Building Trades Council, and the Central Labor Council of Phoenix, it hereby undertakes and binds its members to the policy of adjudicating all wage scales and working conditions by the orderly processes of negotiations through its regularly constituted representatives.

II.

Recognition

The Company agrees to recognize and deal with the Union as the sole collective bargaining agent for all of their planing mill employees in their operations at Phoenix, Arizona, except office workers, shipping clerks, and superintendents, and the Company agrees to continue such recognition during the life of this agreement.

III

Employment

The Company agrees to have in their employ only members in good standing of the Union, subject, however, to the following terms and conditions:

1. The Company shall have the right to determine the competency of all persons to be hired. If after a request by a Company, the Union is unable to furnish a person satisfactory to the Company, the Company shall have the right to hire a non-union man, provided, however, that any non-union man so hired shall be subject to a probationary period of fifteen (15) days, and if after such period he is acceptable to the Company he shall become a member of the Union. If the Union is notified by a Company that a non-union man has been hired for the above-mentioned probationary period, the Union shall be obligated to issue a working card to such individual before he commences work, it being understood and agreed that the purpose of such working card is to enable the Union to maintain records of such probationary employment.

2. Employers agree that any employee who fails to maintain membership in the Union as provided in Section I above shall be discharged upon proper notice given by the Union.

3. The Company shall have the right to discharge any employee for misconduct, inefficiency, insubordination or incompetency.

4. The shop stewards shall make themselves known to the employer. No shop steward shall be discharged or laid off solely for the reason that he is a shop steward or that he is performing his duties as such.

IV.

Seniority Rights

In filling vacancies in the higer classifications, the Company accepts the principle of exercising due regard for length of service, taking into account ability and efficiency to perform the duties of the higher classification, and the general practice will be followed of promoting those who by length of service and ability to perform the duties of the higher classification shall be deemed to have earned promotion.

Any regular employee who is laid off because of a shut-down or lack of work shall be returned to work if a vacancy for his classification exists, at his regular status and if he is available within fifteen (15) days.

In the event of a layoff no new man shall

be hired until the list of laid off employees in their respective classifications is exhausted, providing that a laid off employee in such classification is available within fifteen (15) days. The Company reserves the right to employ men regardless of this provision when necessary to fill jobs for which qualified workers cannot be promptly obtained from the list of laid off employees or from the Union.

The Shop Steward shall head seniority list in case of layoffs in his classification.

V

Hours of Work

1. Eight (8) hours shall constitute a normal day's work and forty (40) hours shall constitute a regular work week. The regular work days shall consist of Monday, Tuesday, Wednesday, Thursday and Friday. Any work in excess of eight (8) hours in any twenty-four (24) hour period shall be considered overtime and be paid for at the rate of time and one-half. Any work in excess of forty (40) hours in any work week shall be considered overtime and shall be paid for at the rate of time and one-half if such overtime has not been previously paid for at such rate, as overtime in excess of the normal eight (8)

hour day. Any work done on Saturday or Sunday shall be paid for at rate of time and one-half.

2. Employees ordered to report for work shall receive a minimum of four (4) hours' pay at straight time. Any employee shall be considered as having been ordered to work if the foreman or working superintendent fails to notify him not to report at the end of the previous day or shift.

3. No employee shall be required to work more than five (5) consecutive hours without a meal period.

VI.

Holidays

The following days will be reserved as holidays and no work shall be done unless rate and one-half is paid: New Year's Day, Fourth of July, Labor Day, Armistice Day, or any one day designated as Armistice Day, Thanksgiving Day, and Christmas Day. When a holiday falls on Sunday the following day will be observed. No work will be done on Labor Day except to save life or property.

VII.

Wage Rates

There is attached hereto and made a part hereof a wage scale covering the various classifications of employment in the Company's planing mills, and no employee will be expected to perform work in the classifications listed for less than the prescribed scale. The Company agrees that there shall be only one apprentice for every four (4) journeymen in the planing mills covered by this agreement. The Company further agrees to give each and every apprentice a chance to learn the several branches of the trade and to advance their wages in conformity with the attached wage scale. An apprentice shall not be less than seventeen years of age and not more than twenty-four years of age when starting his apprenticeship. He shall undergo a course of training for four years. An apprentice shall not be used to operate a machine continuously taking the place of a journeyman and depriving the apprentice of the opportunity to complete his training on other operations. Apprentices shall not be required to work in the warehouse as regular employees of that department. They may assist in the warehouse as a part of their training or to avoid temporarily the necessity of laying them off. The parties agree to

meet and discuss an apprentice training program.

Any employee receiving wages in excess of scale for his classification at the time this agreement is executed shall be given a 10% increase.

VIII.

Vacations

During the year 1946, each employee who has been in the employ of the company for not less than one (1) year preceding the date of the commencement of his vacation and has worked at least 1200 straight time hours during the year shall be entitled to vacation of one week with forty (40) hours' pay at his regular rate. Each employee who has been in the employ of the Company for not less than five (5) years preceding the date of the commencement of his vacation and has worked at least 1200 hours in each of five (5) years shall be entitled to vacation of two (2) weeks with eighty hours' pay at his regular rate.

IX.

Sales of Products

It is understood and agreed by the Union

that the Company shall have and maintain the right of selling and delivering merchandise to any one to whom they desire, provided, however, that no Union man will be required to deliver through a picket line.

X.

Grievances, Arbitration, Strikes and Lockouts

It is agreed that all differences arising as to the interpretation or application of the terms of this agreement shall be discussed by the parties and every effort will be made to settle such differences in a spirit of amity and understanding. The general procedure shall be for the employee or employees who have a grievance to take up such grievance with the foreman of their department. The shop steward may take the grievance up for any employee when requested to do so. If no settlement can be reached in this manner, the matter shall then be referred to the business representative of the Union and the manager of the Company. If no settlement is reached after such meeting, then either party may request arbitration of the dispute. Request for arbitration shall be presented in writing to the other party and shall contain complete outline of the nature of the complaint. The matter in dispute shall then be referred to a

permanent arbiter for settlement within ten (10) days after receipt of the request for arbitration. The parties agree that Jerome M. Kelleher shall be designated as permanent arbiter. In the event that he is unable to serve, a substitute arbiter designated by the permanent arbiter, shall be accepted by the parties. The arbiter's fee shall be equally divided between the parties. Expenses of witnesses called by either party shall be paid by the party requesting the attendance of such witness. The expense of any witness called at the request of the arbiter shall be borne equally by the parties.

It is agreed that there shall be no strikes, lockouts or work stoppages of any nature during the tenure of this agreement except that this provision shall not be binding upon either party if the other party fails or refuses to abide by the arbitration procedure set forth herein.

XI.

Duration of Agreement

This contract shall remain in effect from date of signing until January 7, 1947, except that either party may re-open the agreement for negotiation of a new wage scale upon thirty (30) days' notice given to the other party on or after July 1, 1946.

Wage scales provided in the agreement shall become effective immediately and shall remain in effect for the duration of the contract unless changed by mutual agreement.

Company agrees to adjust compensation of all employees on their payrolls to conform with the new scale retroactive to November 2, 1945.

XII.

Union Label

It is hereby understood and agreed by both the Company and the Union that the said union label herein mentioned and referred to is, and shall remain the property of the United Brotherhood of Carpenters and Joiners of America and be at all times in the possession of a member of the United Brotherhood of Carpenters and Joiners of America; and that said label shall at no time be used in any manner that will be detrimental to the interests and welfare of the members of the said United Brotherhood of Carpenters and Joiners of America; and that upon evidence that the said label is being used in a manner detrimental and harmful to the members of the said United Brotherhood of Carpenters and Joiners of America, then the use of said label shall be immediately withdrawn from

the planing mill of the Company violating this section of the Agreement.

By executing this agreement the parties agree that they have settled and compromised all of their differences and disputes with respect to wages, hours and working conditions prior to the date of this agreement and that the parties shall be bound by the terms hereof for the period set forth herein, and that this is the entire agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year in this instrument first above written.

District Council of Carpenters
Maricopa County and Vicinity
By J. H. McNEILL

United Brotherhood of Carpenters
and Joiners of America, Int. Union
By JOHN MURRAY

AMERICAN SASH & DOOR CO.
By E. PROCTOR

Millmen, Cabinet Makers and
Lumber Handlers Union No. 209
By W. C. POOR

(Title of Court and Cause)

MOTION TO STRIKE

Filed: Mar. 15, 1947

COMES NOW the defendant, John L. Sullivan, individually and as Attorney General of the State of Arizona and without waiving any other motions and pleadings filed herein makes the following motion to strike:

I.

Moves to strike the complaint filed herein and the whole thereof for the following reasons:

1. That said complaint is violative of and fails to comply with the provisions of Sections 21-404 and 21-408, A.C.A. 1939.

2. That all of the allegations of said complaint are redundant, immaterial, impertinent and scandalous.

3. That plaintiffs, American Federation of Labor; Arizona State Federation of Labor; Phoenix Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America; Millmen, Cabinet Makers and Lumber Handlers Union No.

2093, are alleged to be voluntary unincorporated associations and as such are not legal entities having a capacity to sue and therefore all allegations as to their existence, functions, powers, duties, members, contracts, agreements, aims, objectives and other matters concerning said associations are immaterial and irrelevant.

4. That said complaint is so replete and overburdened with immaterial allegations as to the policy, philosophy and ideology of labor unions that it is impossible to formulate any clear cut issue of fact or law based thereon.

5. That said complaint although purporting to contain only one claim for relief actually contains several such claims for relief which are so involved and intermingled that it is impossible to separate the same.

II.

Moves to strike those specific portions of said complaint hereinafter designated for the reasons hereafter specified:-

1. Paragraph I of said complaint and the whole thereof for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

Sub-paragraphs 1 to 6, inclusive, and sub-paragraphs 8 to 16 inclusive, of Paragraph II of said complaint and the whole of said sub-paragraphs for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraphs violate the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

(c) That plaintiffs, American Federation of Labor, Arizona State Federation of Labor, Phoenix Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, Millmen, Cabinet Makers and Lumber Handlers, Union No. 2093, are alleged to be voluntary unincorporated associations and as such are not legal entities having a capacity to sue and therefore all allegations as to their existence, functions, powers, duties, members, contracts, agreements, aims, objectives and other matters concerning said associations are immaterial and irrelevant.

3. That portion of sub-paragraph 7 of

Paragraph II of said complaint beginning with the words "and a member of local union No. 2093" and ending with the words "State of Arizona" for the following reasons:

(a) Said allegations are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

(c) Said union, brotherhood and federations are alleged to be voluntary unincorporated associations and any allegations as to plaintiff, Forest L. Stiers, being a member thereof are immaterial.

4. That portion of sub-paragraph 17 of Paragraph II of said complaint which constitutes the last sentence thereof for the following reasons.

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

5. All of sub-paragraph 18 of Paragraph

II of said complaint and the whole thereof for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

(c) Said sub-paragraph 18 violates the provisions of Section 21-524, A.C.A. 1939.

6. That portion of sub-paragraph 19 of Paragraph III of said complaint beginning with the words "where it employs" and ending with the word "commerce" for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

7. That portion of sub-paragraph 20 of Paragraph III of said complaint beginning with the words "and was and is engaged in concrete construction work" and ending with the word "commerce" for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

8. That portion of sub-paragraph 21 of Paragraph III of said complaint beginning with the words "and prior" and ending with "No. 2093" for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A. C. A. 1939.

9. That portion of sub-paragraph 22 of Paragraph III of said complaint reading "and prior to December 1, 1946, was a member in good standing of plaintiff Phoenix Building and Construction Trades Council" for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A. C. A. 1939.

10. That portion of sub-paragraph 23 of Paragraph III of said complaint reading as follows: "and prior to January 1, 1947, was a member in good standing of plaintiff, Local Union No. 2093" for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

11. All of sub-paragraph 23 (a) of Paragraph III of said complaint and the whole thereof for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

12. That portion of sub-paragraph 24 of Paragraph III of said complaint beginning with the words "and is authorized" and ending with the words "enforce the laws of the state" being the end of said sub-paragraph for the following reasons:

(a) All of the allegations of said

paragraph are redundant and immaterial.

(b) Said allegations fail to comply with the provisions of Section 21-404, Section 21-408 and Section 21-524, A.C.A. 1939.

13. All of Paragraph IV of said complaint including sub-paragraphs 25 through 29, inclusive, for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

14. That portion of sub-paragraph 30 of Paragraph V of said complaint reading as follows: "said amendment is commonly known as 'THE RIGHT TO WORK AMENDMENT,' 'RIGHT TO STARVE,' and 'CLOSED SHOP AMENDMENT' for the following reasons:

(a) Said allegation is redundant, immaterial and scandalous.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

15. All of sub-paragraph 31 of Paragraph V of said complaint and all of sub-paragraphs 33, 35, 36 and 37 of Paragraph VI of said complaint for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

16. Those portions of Part (1) of sub-paragraph 38 of Paragraph VIII of said complaint as follows: Beginning with the word "end" at the end of the first line of said sub-paragraph and ending with the words "plaintiff labor organizations herein" in Line 4 of said sub-paragraph.

The words "and organizations" appearing at the end of Line 10 of said sub-paragraph.

The words "and of the mutual contracts and obligations heretofore assumed by members of the plaintiff organizations in such mutual association and assembly" in Lines 18 to 20 of said sub-paragraph.

The words "and would impair and restrain the association of rights alleged in paragraphs nos. 10 through 12, *supra*" ap-

pearing in Lines 23 and 24 of said sub-paragraph. Said allegations should be stricken for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

17. All of Parts (2 through 6) inclusive, of sub-paragraph 38 of Paragraph VII of said complaint for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

18. Those portions of sub-paragraph 39 of Paragraph VIII of said complaint as follows: The words "the plaintiff labor organizations" in Line 6 of said sub-paragraph.

Beginning with the words "and of" at the end of Line 9 and ending with the word "assembly" being the first word in Line 12 of said sub-paragraph.

The words "such plaintiff labor organizations" in Lines 12 and 13 of said sub-paragraph.

Beginning with the words "under contracts" in Line 16 of said sub-paragraph and ending with the words "automatic renewal" in Lines 14 and 15 on Page 34 of said complaint.

Beginning with the words "plaintiff labor organizations" in Lines 15 and 16 on Page 34 of said complaint and ending with the words "organizations and" in Lines 21 and 22 on Page 34 of said complaint.

Beginning with the words "Such acts and" in Line 25 on Page 34 of said complaint and ending with the end of said paragraph 39.

All of said sub-paragraph 39 of Paragraph VIII of said complaint.

Said allegations should be stricken for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the pro-

visions of Section 21-404, and Section 21-408, A.C.A. 1939.

19. All of sub-paragraph 40 of Paragraph VIII of said complaint for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

20. All of sub-paragraph 42 of Paragraph VIII of said complaint for the following reasons:

(a) All of the allegations of said sub-paragraph 42 are redundant, immaterial and scandalous.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

21. Exhibits (a) and 2 attached to said complaint for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

22. Those portions of the caption of said complaint which read as follows: "AMERICAN FEDERATION OF LABOR: ARIZONA STATE FEDERATION OF LABOR: PHOENIX BUILDING AND CONSTRUCTION TRADES COUNCIL: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA; MILLMEN, CABINET MAKERS AND LUMBER HANDLERS, UNION NO. 2093:" and "and as President of LOCAL UNION NO. 2093" for the following reasons:

(a) All of the allegations of said paragraph are redundant and immaterial.

(b) Said paragraph violates the provisions of Section 21-404 and Section 21-408, A.C.A. 1939.

(Signature of counsel for defendants)

Identical Motions to Strike were filed by defendants other than the Attorney General, and are omitted from this Abstract to avoid duplication.

(Title of Court and Cause)

MOTION TO DISMISS

Filed: Mar. 15, 1947

COMES NOW the defendant, John L. Sullivan, individually, and as Attorney General of the State of Arizona and without waiving any other motion filed herein moves to dismiss the complaint in the above-entitled action for the reasons:

I.

The court lacks jurisdiction over the persons of plaintiffs, American Federation of Labor, Arizona State Federation of Labor, Phoenix Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, Millmen, Cabinet Makers and Lumber Handlers Union No. 2093 and Forest L. Stiers, as President of Local Union No. 2093.

II.

The complaint fails to state a claim upon which relief can be granted.

(Signature of counsel for defendants)

(Title of Court and Cause)

MOTION TO DISMISS

Filed: Mar. 15, 1947

Come now American Sash & Door Company, a corporation, and W. B. Stevens, defendants herein, and move the court:

That it dismiss this action as between them and American Federation of Labor; Arizona State Federation of Labor; Phoenix Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America; Millmen, Cabinet Makers and Lumber Handlers Union No. 2093 and Forest L. Stiers, as President of Local Union No. 2093, for the following reasons:

1. That all of the plaintiffs just above named, except Forest L. Stiers as President of Local Union No. 2093, are voluntary and unincorporated associations, as appears from the allegations of the complaint, and have no right or power under the law to institute or maintain this action.

2. That the plaintiff, F. L. Stiers, has no right under the law to institute or maintain this action as President of said Local Union No. 2093.

(Signature of counsel for defendants)

Identical Motion to Dismiss was filed by D. A. Brewer and Edward L. Beard, and is omitted to avoid duplication.

(Title of Court and Cause)

MOTION TO DISMISS

Filed: April 5, 1947

Come now AMERICAN SASH & DOOR COMPANY, a Corporation, and W. B. STEVENS, Defendant herein, and without waiving any other motions on file herein, move to dismiss the complaint in the above entitled action, for the following reasons:

I.

That it appears from the face of the complaint that the several causes of action attempted to be stated therein have been improperly joined, in that said several alleged causes of action arise out of separate, distinct and unrelated agreements, and that the parties signatory have no rights in any agreement except the particular agreement which they executed.

II.

The complaint fails to state a claim upon which relief can be granted.

(Signature of counsel for defendant)

MEMORANDUM OF OPINION AND ORDER.

Filed: May 19, 1947

This matter is presented on motions to strike and to dismiss. All defendants have filed motions to dismiss upon the ground that the plaintiffs are voluntary unincorporated associations and are not legal entities and have not legal capacity to sue.

It is unquestionably true that both at common law and in the various States of the Union such associations have been held to not be legal entities and therefore incapable of sueing or being sued except where they have been invested with such power by statute, either expressly or by necessary implication.

The Legislature of this State has never expressly recognized an association such as

a labor union as a legal entity with right to sue or be sued; that is, it has never expressly given it the right to sue or be sued, or declared it to be a legal entity.

The Legislature has, however, enacted a number of laws which do recognize voluntary associations, and in some statutes expressly recognize the existence of labor organizations having rights entitled to protection under the law.

First: Section 1-103 defines a person to include an association.

Second: Section 56-204 provides that wages on public works in this State shall conform with prevailing wages of each type of workmen doing similar work affiliated with or belonging to the American Federation of Labor, the Arizona State Federation of Labor, or any other State or National labor organization.

Third: Section 27-309 provides for the validity of a clause for arbitration of any controversy where the contract provides for it, except that it should not apply to collective contracts between employer and employees or employer and association of employees.

Fourth: Sections 43-5604 and 5605

authorize labor unions to adopt a label and provide for its registration with the Secretary of State, and also provide that any person who may use the name or seal of such a union in and about the sale of goods without authority from such union shall be guilty of a misdemeanor.

Fifth: Section 43-1608 provides that it shall be a misdemeanor for any person to coerce or compel any other person to enter into either a verbal or written agreement not to join or become a member of a labor organization as a condition of such person securing employment or continuing in the employment in which he was then engaged.

Sixth: Section 21-305 (3) provides for service of process upon unincorporated associations which are subject to suit under a common name, by delivering a copy of summons to a managing or general agent, etc. (This may apply only to fraternal benefit societies provided for under Sections 53-701 to 53-705.)

Seventh: Section 21-524 provides for suit by a representative where persons are too numerous to be joined as parties plaintiff or defendant.

I have read many of the cases cited by

both plaintiffs and defendants and I have not found any cases which give to a voluntary association, such as labor unions, the right to sue or be sued, except in cases where the legislature of a State or the Congress of the United States had enacted laws recognizing such unions to such an extent that the courts claimed to be justified in finding that they had been given the status of a legal entity by implication or by express language. It is not necessary to comment on all the cases cited, but I shall content myself to refer only to the case of the United Mine Workers v. Coronado Coal Co., found in 259 U. S. 344, 27 A.L.R. 762. Chief Justice Taft, who wrote the decision in that case, found that the plaintiff union had the right to sue and be sued because of the recognition of labor unions by Congress in the following statutes:

(1) The Clayton Act, tendering to such associations formal incorporation as National Unions.

(2) An act approved August 23, 1912, creating an industrial commission, three of whom were to represent organized labor.

(3) The Transportation Act of 1920, Chapter 91, Section 302-307, 41 Stat. 469, recognizing labor unions in the creation of a railroad labor board of adjustment and for

action by that board upon application being made to it by a labor union.

(4) Act of Congress approved August 5, 1909, and the Act approved October 3, 1913, expressly exempting labor unions from an excise tax.

(5) Act of Congress 1912, Chapter 389 (37 Stat. at L. 550), providing for periodical publications of labor unions to be admitted into the mail as second-class mail.

(6) Act of Congress of August 24, 1912, Chapter 389, Section 6, etc., expressly recognizing the legality of labor unions of postal employees.

(7) And by an Act of Congress approved August 1, 1914, providing that no money appropriated therein should be used to prosecute labor unions under the Anti-Trust Act (38 Stat. at L. 609, 652, Chapter 223).

I question the soundness of the Taft opinion, but in view of the fact that the question is of secondary importance and not necessary to the determination of the ultimate issue in the case, and in order to conserve time and labor, the Court adopts the reasoning therein as controlling here, as the Arizona statutes are more positive in their rec-

ognition of labor unions than the Acts of Congress relied upon by Chief Justice Taft.

It will be noted that nowhere did Congress expressly authorize a labor union to sue or be sued, but Chief Justice Taft held that the above Acts of Congress did have the effect of recognizing such unions as being suable. He recognized that said unions did have an existence separate and apart from the individuals of which it was composed and constituted a legal entity so far as its right to sue and be sued is concerned.

Our statutes as above enumerated recognize the existence of labor unions as having the right to own labels to be used by them and their employer in labeling goods manufactured by the employer by union labor and identifying it as the product of union labor. The Legislature provided for the registration of such labels, and made it a misdemeanor for anyone to use them without authority, etc. This is recognition of a property right in the union as distinguished from its membership and to be exercised by it as such union.

Again, the statute recognizes the right of unions to contract with an employer, and exempts their contract from the operations of the law validating provisions for arbitration in case of dispute. That the above statute is

a recognition of the right to contract by the union cannot be gainsaid, and its exemption from the binding effect of a provision to arbitrate disputes gives it a right that is not enjoyed by others entering into contractual relations.

It would seem that the right to contract carries with it the right to enforce said contract and subjects it to whatever liability the contract imposes upon it; and if such rights are not enforceable in law or equity, they do not possess the essential characteristics of a contract. A contract that is unenforceable ceases to be a contract and should not be dignified by such appellation.

Again, in Section 56-204, the Legislature recognizes the right of the union to contract and fix the scale of wages to be paid by the employer, and requires that the Industrial Commission shall use such scale of wages in fixing the wage to be paid on public works to those doing the same type of work as labor union members.

As above stated, the Arizona statutes are as positive and clear in their recognition of labor unions as existing and vested with rights in addition to those of its individual membership as the Federal statutes cited by Chief Justice Taft. In fact the right to con-

tract and to own a seal or label is more potent in the inference to be drawn therefrom or the implications which necessarily follow to the effect that such unions are legal entities with the right to sue and be sued than is found in any or all the Acts of Congress relied upon by Chief Justice Taft in reaching his conclusion in the Coronado Coal case.

In short, the constitutional amendment herein sought to be found unconstitutional recognizes the validity of labor union contracts and seeks to limit the power of the unions to incorporate in said contracts the so-called closed shop clause.

The doctrine of contemporaneous construction is entitled to some consideration in arriving at whether or not labor unions have a right to sue and be sued inasmuch as our courts have repeatedly recognized such rights. It is true that the question was not raised, but the doctrine of contemporaneous construction applies. However, this doctrine is not necessary to the conclusions reached.

Section 21-524 provides for an action at law by representation in cases of this character. Our Supreme Court has recognized such actions as being entirely justified under our law.

The plaintiff Forrest L. Stiers could maintain this action for all members of his union as representatives of said class. In paragraph sixteen of the complaint, while it perhaps does not fully and concisely allege the requisite facts for such representative action, the allegations are sufficient, though unartfully drawn, to state a cause of action.

The primary object of this action is to determine the constitutionality of the so-called right-to-work amendment to the Arizona Constitution, and it is wholly immaterial whether labor unions have a right to sue and be sued or not so far as the ultimate ends sought are concerned, and this Court has, therefore, been required to devote much time to matters of secondary importance, since the matter may have been determined under proper pleadings in accordance with the provisions of Section 21-524, providing for an action by representation.

The motion to dismiss is therefore denied upon the grounds above stated, for the reasons stated.

The motion to dismiss upon the ground of a misjoinder of parties will likewise be denied, for the reason that Section 21-512 is broad enough to admit of the joinder of said several parties plaintiff.

The Court is of the opinion that far more than half of the complaint is wholly immaterial and irrelevant and in fact has no place in this cause of action, but since the case must be determined upon questions of law and not of fact the Court will not take the time to exercise its right to strike. The motions to strike are therefore denied.

In the event, however, counsel for plaintiffs is of the opinion that evidence will be necessary to substantiate any of the allegations of the complaint in order for the Court to properly determine the issue of the constitutionality or unconstitutionality of said amendment, the Court reserves the right to reject such evidence based upon such immaterial allegations as it believes to be improper.

DONE IN OPEN COURT this the 16 day of May, 1947.

M. T. PHELPS
Judge

(Title of Court and Cause)

ORDER GRANTING MOTION TO DISMISS

Entered: July 25, 1947.

This matter having been under advisement and the Court being now fully advised in the premises, whereupon,

It is Ordered by the Court that the Motion to Dismiss the Complaint is granted, the Court being of the opinion that the Amendment does not violate the 5th nor the 14th Amendment of the Constitution of the United States, nor does it conflict with the National Labor Relations Act. The claim that said Amendment restrains civil right of assembly and speech constituted under the First Amendment of the Federal Constitution has no merits nor does the claim that it is contrary to the Bill of Rights set forth in the Constitution of the State of Arizona, said Amendment is of equal dignity with the said Bill of Rights, being last enacted into law supersedes any previous provisions of the Constitution with which it conflicts.

A study of the cases raises some doubt as to whether or not said Amendment interferes with the freedom of contract, but this doubt is insufficient to overthrow the presumption of its validity and specially to justify a trial Court in declaring it unconstitutional.

(Title of Court and Cause)

JUDGMENT

Filed: July 28, 1947

The Court having on the 25th day of July, 1947, granted the Motion to Dismiss of the Defendants, AMERICAN SASH & DOOR, a corporation; W. B. STEVENS; JOHN L. SULLIVAN, individually; JOHN L. SULLIVAN, as Attorney General of the State of Arizona; D. A. BREWER, and EDWARD L. BEARD, and the plaintiffs having elected to waive their right to ammend their complaint and to stand on their complaint, and thereupon an Order for Judgment having been entered upon the Motion of the above named defendants,

IT IS NOW ORDERED, ADJUDGED AND DECREED:

1. That the Amendment to the Constitution of the State of Arizona, adopted by a vote of the people at the general election on the 5th day of November, 1946, and proclaimed effective on the 25th day of November, 1946, commonly known as the "RIGHT TO WORK AMENDMENT" does not violate the provisions of the Constitution of the United States;

2. That the Amendment to the Constitution of the State of Arizona, adopted by a

vote of the people at the general election on the 5th day of November, 1946, and proclaimed effective on the 25th day of November, 1946, commonly known as the "RIGHT TO WORK AMENDMENT" does not violate the Constitution of the State of Arizona;

3. That the plaintiffs complaint and action herein be and is hereby dismissed;

4. That the defendants' have and recover their costs herein expended.

Done in Open Court this 28th day of July, 1947.

M. T. PHELPS
Judge

Approved as to form,

H. S. McCLUSKEY

July 28, 1947

Attorney for Plaintiffs
above named.

(Title of Court and Cause)

NOTICE OF APPEAL

Filed: July 30, 1947

Notice is hereby given that the above named plaintiffs appeal to the Supreme Court of the State of Arizona from the order of the Court granting defendants' motions to dismiss plaintiffs' complaint, rendered in said court in the above entitled cause on the 25th day of July, 1947, and the judgment entered pursuant thereto on the 28th day of July, 1947, in favor of the above named defendants and against the plaintiffs, and from the whole thereof.

APPEAL BOND RECEIPT AND MEMORANDUM ISSUED JULY 30, 1947

No. 55786 C

Phoenix, Arizona, 7-30, 1947

WALTER S. WILSON
Clerk Superior Court
MARICOPA COUNTY, ARIZONA

RECEIVED OF JOSEPH MORGAN
Two Hundred Fifty ($250.00) DOLLARS

For Bond on Appeal . . . In Cause No. 57575.
A.F.L. vs. American Sash.

WALTER S. WILSON,
Clerk of Superior Court

By C. H. Ward, Deputy.

(Title of Court and Cause)

REQUEST AND ORDER THAT ORIGINAL PAPERS BE SENT TO THE SUPREME COURT IN LIEU OF COPIES.

Filed: July 30, 1947

Come now the plaintiffs, appellants above named, and respectfully request that in lieu of copies of the papers designated on appeal, that the originals of said papers be transmitted to the Supreme Court, for the reason that the pleadings and papers are lengthy, and time and expense will be saved by forwarding the original papers.

(Signature of counsel for plaintiffs)

ORDER

On the foregoing request, and the Court being of the opinion that the original papers, in lieu of copies, should be sent to the Supreme Court upon the appeal of this action,

IT IS ORDERED that the Clerk, in lieu of copies, forward the original papers designated for the record on appeal, to the Clerk of the Supreme Court.

Dated July 30, 1947.

DUDLEY W. WINDES
Judge

(Title of Court and Cause)

Served and Filed: July 30, 1947

APPELLANTS' (PLAINTIFFS) DESIGNATION OF RECORD AND PROCEEDINGS TO BE CONTAINED IN THE RECORD ON APPEAL

Come now the appellants above named, and respectfully designate the following papers and proceedings to be contained in the record on appeal to the Supreme Court:

1. Plaintiffs' Complaint, filed Feb. 12, 1947;

2. Attorney General's Motion to Strike, filed March 15th;

3. Attorney General's Motion to Dismiss, filed March 15th;

4. American Sash and Door Co. and W. B. Stevens' Motion to Dismiss, filed March 15th;

5. American Sash and Door Co. and W. B. Stevens' Motion to Dismiss, filed April 5th;

6. Memorandum Opinion and Order of the Court, dated May 16th, filed May 19th.

7. Order of Court sustaining defendants' motions to dismiss, entered July 25th;

8. Judgment entered July 28th;

9. Notice of Appeal;

10. Memorandum of Cost Bond;

11. Minute entries;

12. Request and Order that Original Papers be sent to the Supreme Court in lieu of copies.

13. This Designation of Papers on Appeal.

The above and foregoing covers and includes the whole record of pleadings and proceedings save and except the following:

1. American Sash and Door and W. B. Stevens' Motion to Strike filed March 15th, and

2. D. A. Brewer and Edward L. Beard Motion to Strike, filed March 24th, which are identical with the Attorney General's Motion to Strike contained in the above designation, and

3. D. A. Brewer and Edward L. Beard Motion to Dismiss filed March 24th, which is identical with the American Sash and Door and W. B. Stevens Motion to Dismiss filed on March 15th, and above designated.

The duplicate motions to strike and motion to dismiss would only encumber the record on appeal and are therefore not designated.

Dated July 30, 1947.

(Signature of counsel for plaintiffs)

Service of copy of the above designation acknowledged this 30th day of July, 1947.

(Signature of counsel for defendants)

MINUTE ENTRIES

(Title of Court and Cause)

March 3, 1947

Comes now H. S. McCluskey appearing as counsel on behalf of the Plaintiffs.

It is ordered granting to all Defendants named in the Complaint until March 15, 1947, to move or plead in the matter.

March 23, 1947

It is ordered setting this cause for hearing on April 5, 1947, 9:30 A. M.

April 5, 1947

Come now H. S. McCluskey and Joseph

H. Morgan appearing as counsel on behalf of Plaintiffs; Moeur & Moeur and Charles N. Walters appear as counsel on behalf of Defendants, American Sash & Door Company, a corporation, and W. B. Stevens.

It is ordered on motion of Mr. Moeur, that attorney Charles L. Strouss is entered of record as associate counsel. W. C. Fields appears as counsel on behalf of Defendants, D. A. Brewer and Edward L. Beard. John L. Sullivan, Attorney General, and Burr Sutter and John W. Rood, Assistants Attorney General, appear as counsel on behalf of Defendant John L. Sullivan, individually and as Attorney General of the State of Arizona.

Mr. Moeur presents an Amended Motion to Dismiss.

Mr. Fields adopts the Amended Motion of Mr. Moeur on behalf of his clients.

Mr. Sutter and Mr. Rood argue on the Motion to Strike, on behalf of Defendant, John L. Sullivan, individually and as Attorney General.

At 11:30 A. M. Court takes a five minute recess.

At 11:40 A. M. Court resumes in this

case. Mr. Moeur argues on the Motion to Strike, on behalf of his clients, American Sash & Door Company and W. B. Stevens.

Mr. Fields adopts the argument of Mr. Moeur on the Motion to Strike on behalf of his clients, D. A. Brewer and Edward L. Beard.

At 12:01 P. M. Court takes a recess until 1:30 P. M.

At 1:40 P.M. Court resumes in this cause. Counsel H. S. McCluskey and Joseph H. Morgan argue for the Plaintiffs in answer to the arguments on the Motions of the Defendants. Charles L. Strouss and Mr. Sutter argue in reply to Plaintiff arguments.

It is ordered the Motions to Strike are taken under advisement.

It is ordered allowing counsel for Defendants until April 25th, 1947, to present briefs. Counsel for Plaintiffs may have five (5) days after briefs are submitted to respond.

April 7, 1947

It is ordered striking Defendants', D. A. Brewer and Edward L. Beard, Motion to

Strike and Defendants' Motion to Dismiss from the Motion Docket.

May 19, 1947

This case having been under advisement, and the Court being now more fully advised in the premises:

It is ordered the Motions to Dismiss are denied.

It is ordered the Motions to Strike are denied for the reasons assigned in the Memorandum of Opinion filed herewith.

May 23, 1947

Come now H. S. McCluskey and Joseph H. Morgan appearing as counsel on behalf of the Plaintiffs; attorneys Moeur & Moeur and Charles L. Strouss are present on behalf of Defendants. Attorney Wm. C. Fields is also present and Attorney General, John L. Sullivan, by Burr Sutter and John W. Rood, Assistants Attorney General are present.

Defendants' Motions to Dismiss are submitted to the Court on briefs.

July 25, 1947

This matter having been under advisement, and the Court being now fully advised in the premises, whereupon,

It is ordered by the Court that the Motion to Dismiss the Complaint is granted, the Court being of the opinion that the Amendment does not violate the 5th nor the 14th Amendment of the Constitution of the United States, nor does it conflict with the National Labor Relations Act. The claim that said Amendment restrains civil rights of assembly and speech constituted under the First Amendment of the Federal Constitution has no merits nor does the claim that it is contrary to the Bill of Rights set forth in the Constitution of the State of Arizona, said Amendment is of equal dignity with the said Bill of Rights, being last enacted into law supersedes any previous provisions of the Constitution with which it conflicts.

A study of the cases raises some doubt as to whether or not said Amendment interferes with the freedom of contract, but this doubt is insufficient to overthrow the presumption of its validity and specially to justify a trial Court in declaring it unconstitutional.

July 28, 1947

Comes now H. S. McCluskey appearing as counsel on behalf of the Plaintiffs, and the Defendants are represented by counsel, John L. Sullivan, Attorney General, by John W. Rood, Assistant Attorney General; Moeur & Moeur, William C. Fields, and Jennings, Strouss, Salmon & Trask.

It is ordered the Plaintiffs refuse to amend and stand on the pleadings as they are now.

On motion of Mr. Fields, it is ordered allowing amendment to his Answer by interlineation by incorporating the third defense: "The Complaint fails to state a claim upon which relief can be granted."

It is now ordered, on motion of the Defendants, Judgment will be entered in accordance with the Order for Judgment heretofore entered.

(Certificate of Clerk of the Superior Court dated August 2, 1947)

(Here follows Exhibit A)

(COPY) Exhibit A

UNITED STATES DEPARTMENT OF LABOR
Frances Perkins, Secretary

BUREAU OF LABOR STATISTICS
Isador Lubin, Commissioner (on leave)
A. F. Hinrichs, Acting Commissioner

◆

Extent of Collective Bargaining and Union Status, January, 1945

(SEAL)

Bulletin No. 829

Letter of Transmittal

United States Department of Labor,
Bureau of Labor Statistics,
Washington, D. C., April 9, 1945.

The Secretary of Labor:

I have the honor to transmit herewith a report on the extent of collective bargaining and union status in effect in January, 1945. This study is based on an analysis of approximately 15,000 employer-union agreements as well as employment, union membership, and other data available to the Bureau of Labor Statistics.

This study was prepared under the general supervision of Florence Peterson, Chief of the Industrial Relations Division. Elizabeth Stark and Philomena Marquardt were in immediate charge of assembling the data.

A. F. HINRICHS, Acting Commissioner.

HON FRANCES PERKINS,
Secretary of Labor.

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Bulletin No. 829 of the United States Bureau of Labor Statistics

(Reprinted from the MONTHLY LABOR REVIEW, April, 1945, with additional data)

Extent of Collective Bargaining and Union Status, January 1945 [1]

UNION AGREEMENT COVERAGE

Some 14½ million workers were employed under collective-bargaining contracts in January 1945. An analysis by the Bureau of Labor Statistics indicates that these workers included approximately 47 percent of all workers employed in industries and occupations in which unions are actively engaged in obtaining written agreements with employers.[2] During the year 1944 there was an increase in agreement coverage of over half a million workers, which was equivalent to a 4.5-percent rise in the proportion of employed workers covered by agreements.

Manufacturing.—Approximately 65 percent (more than 8¾ million) of all production wage earners[3] in manufacturing industries were employed under the terms of union agreements at the beginning of 1945, representing an increase during the year of 8 percent in the proportion of employees working under union agreements.

The largest increases in the proportion of workers under agreement were in the tobacco and chemical industries and, to a less extent, in the canned and preserved foods industry. Agreements were negotiated for the first time with several large aircraft and petroleum-refining companies, as well as with a number of meat-packing, shoe, leather-tanning, and rubber companies.

The degree of union organization at the beginning of 1945 varied considerably among the manufacturing industries, although not so much as among nonmanufacturing industries and trades. Over 90 percent of the production wage earners were working under union agreements in the aluminum, automobile, basic steel, brewery, fur, glass, men's clothing, rubber, and shipbuilding industries, in contrast to only a little more than 10 percent in the dairy-products industry.

[1] For similar data for previous years see Monthly Labor Review, April 1944, February 1943, May 1942, and March 1939.

[2] It is estimated that approximately 30¼ million workers were employed in occupations in which unions are actively engaged in organizing and seeking to obtain written agreements. In most industries this includes all wage and salary workers except those in executive, managerial, and certain types of professional positions. It excludes all self-employed, domestic workers, agricultural wage workers on farms employing fewer than 6 persons, all Federal and State government employees, teachers, and elected and appointed officials in local governments.

It should be noted that the number of workers covered by union agreements is not the same as union membership. Except under closed- or union-shop conditions, agreements cover nonmembers as well as members employed within the given bargaining unit. On the other hand, some union members may be working in unorganized plants and many civil-service employees and teachers are members of unions but are not employed under the terms of bilateral written agreements.

[3] Clerical, professional, service, and construction workers, foremen and truck drivers connected with manufacturing are treated as occupational groups under nonmanufacturing employees.

642506°—45

Proportion of Wage Earners Under Union Agreements in January 1945

MANUFACTURIING INDUSTRIES

80-100 percent	60-80 percent	40-60 percent	20-40 percent	1-20 percent
Agricultural equipment. Aircraft and parts. Aluminum. Automobiles and parts. Breweries. Carpets and rugs, wool. Cement. Clothing, men's. Clothing, women's. Furs and fur garments. Glass and glassware. Meat packing. Newspaper printing and publishing. Nonferrous metals and products. Rubber products. Shipbuilding. Steel, basic. Sugar, beet and cane.	Book and job printing and publishing. Clocks and watches. Coal products. Electrical machinery, equipment, and appliances. Leather tanning. Machinery and machine tools. Millinery and hats. Paper and pulp. Petroleum refining. Railroad equipment. Rayon yarn. Tobacco products. Woolen and worsted textiles.	Baking. Canning and preserving foods. Dyeing and finishing textiles. Flour and other grain products. Furniture. Gloves, leather and cloth. Hoisery. Jewelry and silverware. Knit goods. Leather luggage, handbags, novelties. Lumber. Pottery, including chinaware. Shoes, cut stock and findings. Steel products. Stone and clay products.	Beverages, nonalcoholic. Chemicals, excluding rayon yarn. Confectionery products. Cotton textiles. Paper products. Silk and rayon textiles.	Dairy products.

NONMANUFACTURING INDUSTRIES

Actors and musicians. Airline pilots and mechanics. Bus and street car, local. Coal mining. Construction. Longshoring. Maritime. Metal mining. Motion-picture production. Railroads—freight and passenger, shops and clerical. Telegraph service and maintenance. Trucking, local and intercity.	Radio technicians. Theater—stage hands, motion-picture operators.	Bus lines, intercity. Light and power. Newspaper offices. Telephone service and maintenance.	Barber shops. Building servicing and maintenance. Cleaning and dyeing. Crude petroleum and natural gas. Fishing. Hotels and restaurants. Laundries. Nonmetallic mining and quarrying. Taxicabs.	Agriculture.[1] Beauty shops. Clerical and professional, excluding transportation, communication, theaters, and newspapers. Retail and wholesale trade.

[1] Less than 1 percent.

Nonmanufacturing.—About 33 percent (slightly more than 5½ million) of all nonmanufacturing workers were employed under the terms of union agreements at the beginning of 1945, representing an increase during the year of 6 percent in the proportion of employees working under agreement.

Over 95 percent of the coal-mining, maritime and longshoring, and railroad employees, including clerical and supervisory personnel, and over 90 percent of the employees in the iron-mining and telegraph industries were employed under union agreements.

Nearly 25 percent of the employees in service occupations and slightly less than 20 percent of the clerical and professional employees were under union agreements. A major portion of the clerical and professional workers in the transportation, communications, and public utilities industries and practically all actors and musicians were employed under collective-bargaining agreements. In manufacturing, financial, and business service establishments, and in wholesale and retail trade, only about 13 percent of the clerical and professional employees were under agreement.

UNION STATUS

GENERAL TYPES

The union-status provisions in employer-union agreements can be classified into five general types according to their union-membership requirements and privileges, as well as to the presence or absence of check-off arrangements. The various degrees of union recognition or union security are commonly referred to as closed shop, union shop with or without preferential hiring of union members, maintenance of membership, preferential hiring with no membership requirements, and sole bargaining with no membership requirements. Check-off arrangements are of two kinds, usually referred to as automatic check-off and check-off by individual authorization.

Under the closed-shop agreements all employees are required to be members of the appropriate union at the time of hiring, and they must continue to be members in good standing throughout their period of employment. Most of the closed-shop agreements require employers to hire through the union unless the union is unable to furnish suitable persons within a given period, in which case the persons hired elsewhere must join the union before starting to work.

In contrast to closed-shop agreements, a union-shop agreement provides that employers have complete control over the hiring of new employees and such persons need not be union members when hired. They must, however, become members within a specified time, usually 30 to 60 days, as a condition of continued employment. When a union-shop agreement, in addition to requiring that all employees join the union within a specified probationary period, states that union members shall be given preference in hiring, it differs very little in effect from the closed-shop agreement. In a few cases, employees hired before a closed-shop agreement is signed are exempt from the union-membership requirement.

A maintenance-of-membership agreement requires all employees who are members when the agreement is signed, and all who choose later to join the union, to retain their membership for the duration of the

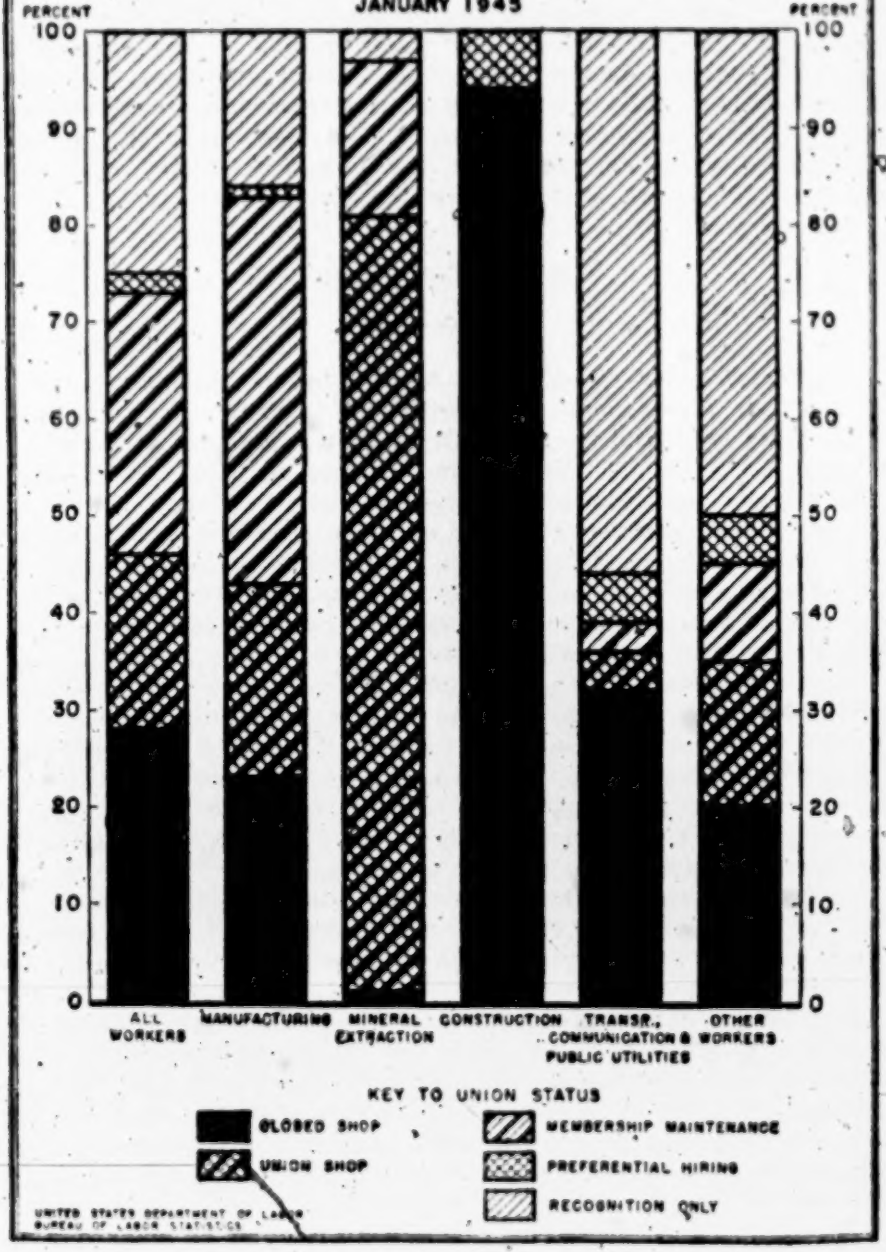
CHART I

PROPORTION OF WORKERS UNDER UNION AGREEMENT

BY UNION STATUS PROVIDED

MAJOR INDUSTRY GROUPS

JANUARY 1945



UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

agreement. The maintenance-of-membership provisions established by order of the National War Labor Board allow 15 days during which members may withdraw if they do not wish to remain members for the duration of the agreement.

Some agreements provide for preferential hiring without union-membership requirements. In other words, union members must be hired if available, but otherwise the employer may hire nonmembers and such persons need not join the union as a condition of continued employment.

Some agreements include no membership requirements as a condition of hiring or continued employment. The union is recognized as the sole bargaining agent for all employees in the bargaining unit and is thus responsible for negotiating the working conditions under which all workers are employed, including those who do not belong to the union. This type of agreement, unlike the others, does not enable the union to rely on employment per se to maintain or increase its membership.

Extent of various types of union-status provisions.—although the proportion of workers under closed- and union-shop clauses remained about the same, the proportion under maintenance-of-membership clauses continued to increase during 1944. By January 1945, approximately 27 percent (3¾ million) of all persons employed under union agreements were employed under maintenance-of-membership clauses, an increase during the year of almost 23 percent in the proportion of workers under such agreements. About 28 percent (4 million) of all workers under agreement were employed under closed-shop provisions and about 18 percent (2½ million) under union-shop agreements. (About 7 percent of the latter were covered by agreements which also specified that union members should be given preference in hiring.) Only 2 percent of all workers under agreement were covered by union preferential clauses, whereas 25 percent were under agreements which provided recognition only.

The proportion of workers under agreement covered by various types of union status in January 1945 is shown by chart 1, for major industry groups. All clerical, professional, and service workers are included in the group "other workers." All trucking and warehousing workers are included in "transportation, communication, and public utilities." Except for these occupational groups, workers have been included in the industry in which they are employed.

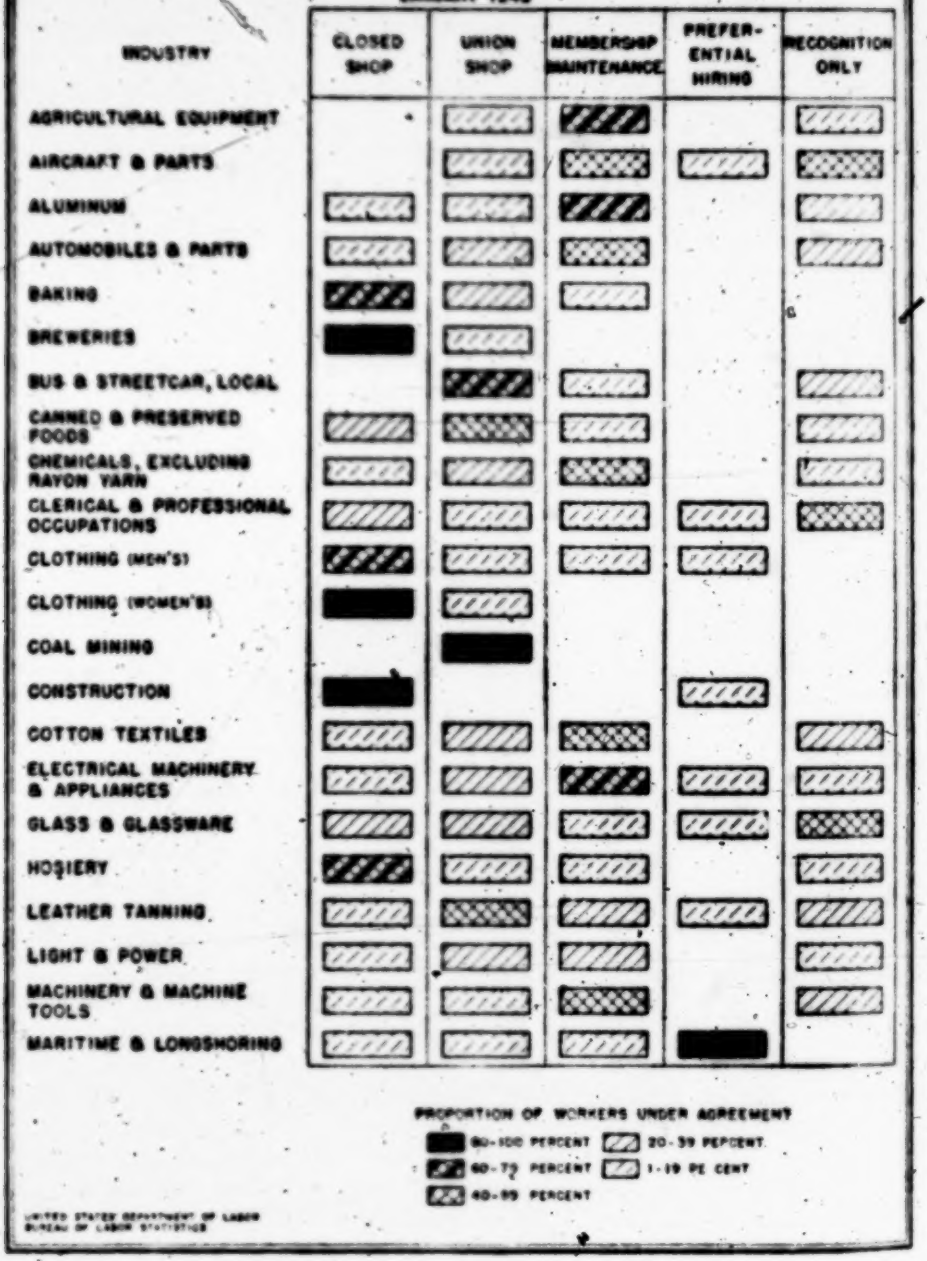
Manufacturing.—In January 1945, closed-shop provisions covered approximately 23 percent of all workers under manufacturing agreements, and union-shop agreements 20 percent—or together a total of about 3¾ million workers. Of the union-shop agreements, about 10 percent also provided that union members should be given preference in hiring. Most of the wage earners under agreement in the bakery, brewery, men's and women's clothing, and printing and publishing industries were employed under closed- or union-shop clauses. Substantial proportions of those under agreement in the hosiery and canned and preserved foods industries, and a majority of those under agreement in the paper, shoe, shipbuilding, and silk and rayon industries, were working under closed- or union-shop provisions.

About 3½ million workers in manufacturing industries were em-

PROPORTION OF WORKERS UNDER UNION AGREEMENT

BY UNION STATUS IN SELECTED INDUSTRIES AND OCCUPATIONS

JANUARY 1945



UNITED STATES DEPARTMENT OF LABOR
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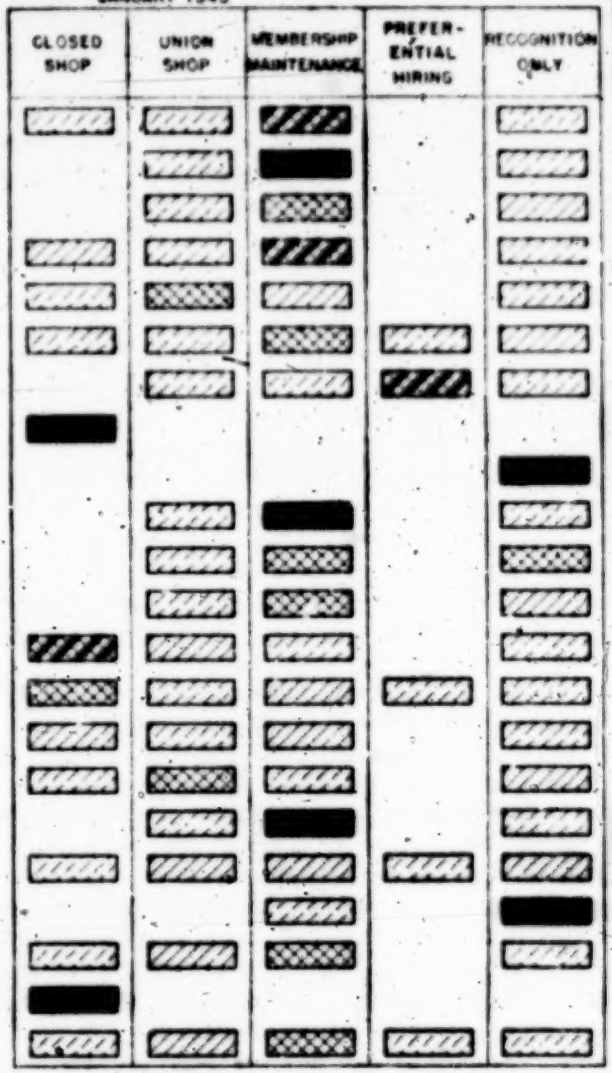
PROPORTION OF WORKERS UNDER UNION AGREEMENT

BY UNION STATUS IN SELECTED INDUSTRIES AND OCCUPATIONS

JANUARY 1945



PROPORTION OF WORKERS UNDER AGREEMENT

80-100 PERCENT
60-79 PERCENT
40-59 PERCENT
20-39 PERCENT
1-19 PERCENT

UNITED STATES DEPARTMENT OF LABOR
BUREAU OF LABOR STATISTICS

clauses. They included 40 percent of all workers under manufacturing agreements, representing an increase of about 14 percent during the year in the proportion employed under such agreements. The greatest increase over the previous year in the proportion working under maintenance-of-membership clauses occurred in the nonferrous-metals alloying, rolling and drawing industry (from less than 15 percent to over 50 percent), but there were very substantial increases in the machinery, and machine-tool, nonferrous-metals smelting and refining, tobacco, woolen and worsted textile, and electrical-machinery industries. At the beginning of 1945 maintenance-of-membership clauses covered most of the employees under agreement in the basic steel industry, a substantial proportion of those in the agricultural and railroad equipment and meat-packing industries and a majority of those under agreement in the aluminum, automobile, electrical-machinery, machinery and machine-tool, rubber, tobacco, woolen and worsted textile industries and in the nonferrous-metals alloying, rolling, drawing, smelting and refining industries.

Only about 1 percent of all manufacturing workers under agreement were employed under preferential-hiring provisions with no union-membership requirements. In only one manufacturing industry, pottery, were such clauses common.

About 16 percent of the workers under agreement in all manufacturing industries were employed in plants which recognize the union as sole bargaining agent but do not require union membership as a condition of hiring or continued employment. In the rayon-yarn industry slightly more than half of those under agreement were covered by such clauses and between a third and a half of those in the cotton textile, petroleum and coal products, nonferrous-metals alloying, rolling, and drawing, aircraft, and glass industries.

Nonmanufacturing.—Approximately 36 percent of all workers under agreements in nonmanufacturing industries and occupations were covered by closed-shop provisions and about 16 percent by union-shop provisions—a total of more than 2¾ million workers. Only a few of the union-shop agreements also provided that union members should be given preference in hiring. The closed shop was provided in almost all agreements in building construction and trucking and in many of the agreements covering service and trade employees such as barbers and employees in building service, laundry, dry cleaning, and food establishments. Coal miners and a majority of the organized bus and street-railway employees were under union-shop agreements.

About 6 percent of the nonmanufacturing workers under agreement were employed under membership-maintenance clauses. The greatest increase over the previous year in the proportion working under such clauses occurred in wholesale and retail trade, metal mining, and crude petroleum and natural gas; in the two last-named industries the majority of the employees were covered by such clauses.

Only 4 percent of all nonmanufacturing workers under agreement were employed under agreements with preferential-hiring provisions but no union-membership requirements. Only in maritime and longshoring are such clauses common.

About 38 percent of the workers under agreement in all nonmanufacturing industries and occupations were employed under contracts which recognized the union as sole bargaining agent but included

no membership requirements. More than half of these workers were employed in the railroad industry, where virtual union-shop conditions prevail, although the agreements do not provide for union-shop arrangements.

CHECK-OFF ARRANGEMENTS

During 1944 there was an increase of about 28 percent in the proportion of workers under agreements who were covered by some form of check-off provisions. Almost 6 million workers, or more than 40 percent of all employees under agreement, were covered by check-off provisions in January 1945. About half were covered by clauses providing for the automatic check-off of all members' dues and the other half by clauses which provide for check-off only for those employees who file individual written authorizations with the employer. Under some of the latter agreements the authorizations, once made, continue in effect for the duration of the agreement; under others they may withdrawn whenever the employee desires. (If working under a closed- or union-shop or maintenance-of-membership agreement, however, the employee must personally pay his dues to the union if he cancels his check-off.) Although most of the check-off clauses provide that all dues and assessments levied by the union shall be collected, some specify "regular dues only" or check-offs not to exceed a given amount.

Manufacturing.—Almost 4½ million workers, or more than half of all workers under agreement in manufacturing industries, were employed at the beginning of the year under agreements which provide for check-off. Slightly fewer manufacturing workers were covered by automatic check-off arrangements than by provisions for check-off upon individual authorization.

During 1944 the proportion of workers under check-off arrangements increased about 38 percent. Most of the increase in the proportion under agreement with check-off arrangements took place in shipbuilding, although there were considerable increases in the railroad-equipment and nonferrous-metals alloying, rolling, and drawing industries. Over 90 percent of the workers under agreement in the basic steel, railroad-equipment, and hosiery industries were covered by check-off provisions, and the great majority of those in the cotton-textile, meat-packing, nonferrous-metals alloying, rolling, and drawing, shipbuilding, silk and rayon textile, and woolen and worsted textile industries.

Nonmanufacturing.—About 1½ million, or 26 percent of the workers employed under agreements in nonmanufacturing industries, were covered by some form of check-off arrangement. Most of thesecheck-off clauses, including those covering coal miners, specify that the employer is to deduct the union dues and assessments from the wages of all members. The agreements for about a third of the nonmanufacturing employees covered by check-off clauses provided for check-off only upon authorization of individual employees.

[fol. 110] IN SUPREME COURT OF ARIZONA

Assignments of Error Appearing in Appellants' Brief Filed and Presented to the Supreme Court of Arizona on the 9th Day of September, 1947—Pages 11-13, in Cause No. 5028, American Federation of Labor, et al., Appellants, vs. American Sash & Door Company, et al., Appellees

ASSIGNMENTS OF ERROR

I

The Court erred in holding the amendment to be valid and constitutional and in granting defendants' motion to dismiss plaintiffs' complaint, and entering judgment of dismissal in favor of the defendants, for the reason that the facts set forth in the complaint, admitted by the motion to dismiss, disclose that no actual need or necessity existed for the suppression of union-shop contracts, that in fact such agreements are of benefit to the public, and that upon no reasonable theory the amendment contributed to the public welfare, but is arbitrary, unreasonable and excessive, and that it therefore became the duty of the court to declare the measure invalid and unconstitutional, and set it aside as being violative of constitutional guaranties against the impairment of the obligation of and freedom to enter into contracts, as prayed for in the complaint.

II

The Court erred in holding that the amendment was constitutional, and in dismissing plaintiffs' complaint and entering judgment for defendants, for the reason that it clearly appeared that the measure was and is void and invalid, in that it constitutes class legislation and is discriminatory, and is, therefore, void under the equality provisions of the Fourteenth Amendment of the United States Constitution.

III

The Court erred in holding the amendment valid and in dismissing plaintiffs' complaint and rendering judgment [fol. 111] for the defendants, for the reason that the measure impairs and prevents the exercise of civil rights of assembly and speech, by the prohibition of union shop agree-

ments, without which organizations of laborers, for the purpose of assembly, speech and security, are wholly ineffective.

IV

Specifically, the court erred in holding that the obligation of contracts existing at the effective date of the act, were voided by the amendment, and in dismissing plaintiffs' complaint as to such contracts and entering judgment for the defendants, for the reason that it clearly appears from the terms of the act that the prohibition is directed and confined to the execution of contracts after the amendment became effective.

[fol. 112] IN THE SUPREME COURT OF ARIZONA

No. 5028

AMERICAN FEDERATION OF LABOR; ARIZONA STATE FEDERATION OF LABOR; Phoenix Building and Construction Trades Council; United Brotherhood of Carpenters and Joiners of America; Millmen, Cabinet Makers and Lumber Handlers Union, No. 2093; Forest L. Stiers, individually and as President of Local Union No. 2093, and Ralph Henley d.b.a. Ralph Henley Millwork, Appellants,

vs.

AMERICAN SASH & DOOR COMPANY, a Corporation; D. A. BREWER; W. B. Stevens; Edward L. Beard; James R. Miller, and John L. Sullivan, individually and as Attorney General of the State of Arizona (succeeded by Evo De Concini as Attorney General who has been substituted as a party defendant), Appellees

Appeal from Superior Court of Maricopa County

Honorable M. T. Phelps, Judge

Judgment Affirmed

J. H. Morgan and H. S. McCluskey, of Phoenix; Herbert S. Thatcher, of Washington, D. C.; Minne & Sorenson, and George Wilson, of Counsel, of Phoenix, Attorneys for Appellants.

John L. Sullivan, Attorney General; John W. Rood, Chief Asst. Atty. Genl.; Moeur & Moeur; Jennings, Strouss, Salmon & Trask; J. A. Riggins, Jr. Henry S. Stevens, Burr Sutter, all of Phoenix, Attorneys for Appellees.

[fol. 113] OPINION

UDALL, J.:

This appeal involves a determination of the constitutionality of what has been commonly styled the "Right to Work" Amendment to the Arizona Constitution. For reasons which will be later developed, we have neither the duty nor the right to consider or judge the wisdom of this legislation or its practicability. Our function is limited to finding whether it offends the Constitution of the United States. The people of the State of Arizona at the general election held in 1946 adopted an Amendment to the Constitution of the State of Arizona, reading as follows:

> "No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, nor shall the state, or any subdivision thereof, or any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment or continuation of employment because of non-membership in a labor organization." (Petition and Governor's Proclamation validating it appear in 1947 Session Laws of Arizona at page 399.)

The Amendment (and as such it will hereafter be designated) became effective upon proclamation by the Governor dated November 25, 1946. On February 12, 1947, the appellants (plaintiffs below), as representatives of one segment of labor, filed this civil action to procure a declaratory judgment (under Article 7, Chapter 27, A. C. A. 1939) in respect to its validity, interpretation and effect, and for injunctive relief against its enforcement.

The trial court, while denying motions of appellees (defendants below) to strike portions or all of the forty-page complaint, commented that "far more than half of the complaint is wholly immaterial and irrelevant" but it granted their motion to dismiss the complaint. Appellants having elected to stand thereon, judgment was entered dismissing

the action, and from the order and judgment of dismissal this appeal was taken.

No testimony was taken in the court below, and we have properly before us no conclusions of law, but only the facts well pleaded in the complaint (and, therefore, impliedly admitted by appellees by their motion to dismiss), together with such other matters of which we may take judicial notice.

Parties to Suit

The appellants are various national and local labor organizations affiliated with the American Federation of Labor and an employer and an employee, all of whom have entered into or desire to enter into union-security agreements in Arizona. The appellees are: (1) The Attorney General of Arizona (the present incumbent Evo De Concini having been substituted for, and having adopted the same position as, his predecessor) who, as the chief law enforcement officer, it is alleged, had threatened to institute civil and criminal proceedings against all persons violating said Amendment; (2) various employers who are parties to union-security agreements; and (3) individual employees whose employment status would be affected by reason of such agreements.

Issues

By appropriate assignments of error and propositions of law, appellants challenge the Amendment as being either invalid and unconstitutional, or at least inoperative as to certain contracts, for the following reasons: (1) the Amendment arbitrarily and unreasonably impairs the obligations of existing contracts and deprives both unions and employers of freedom of contract; all in violation of Article 1, Section 10, of the United States Constitution and the dues process clause of the Fourteenth Amendment. (2) The Amendment constitutes class legislation and is highly discriminatory, denying unions and union members the equal protection of the laws contrary to the Fourteenth Amendment. (3) The Amendment impairs and previously restrains the exercise of the civil rights of assembly and speech guaranteed under the First Amendment. (4) In the event the Amendment be held valid by this court, appellants contend that it does not apply to contracts now exist-

[fol. 114]

ing which were entered into previous to the effective date of its adoption.

[fol. 115] In the court below appellants urged that the Amendment was invalid because it was in conflict with the Wagner Act. However, since passage by Congress of the Taft-Hartley Act, they have, for obvious reasons, abandoned this ground in presenting the instant appeal.

Neither need we here determine whether said Amendment is self-executing as this was not advanced either in the assignments of error or in the arguments contained in the briefs. It is evident, at least, that the Eighteenth Legislature considered additional sanctions necessary because that body, in regular session assembled, enacted four measures (Senate Bills numbered 3, 65, 66, & 67) to implement it. Senate Bill No. 65 became a law (Chapter 81, Session Laws of Arizona, 1947, at page 173) with the Governor's approval on March 20, 1947. That law provides for injunctive relief and suits for damages for violations of the Amendment and also declares contracts prohibited by it to be illegal and void. No criminal penalties are prescribed. The other three measures (providing for conciliation of labor disputes, the enforcement by suits at law of collective bargaining agreements, and prohibiting secondary boycotts) never became law by reason of being vetoed by the Governor after adjournment of the legislature. These measures appear with other vetoed bills on pages 414 to 423 inclusive of the 1947 Session Laws.

The authority of the people of Arizona to amend their Constitution is unlimited except where prohibited by the Federal Constitution or in conflict with federal law enacted pursuant to constitutionally granted authority. However, an amendment has no greater validity and stands on no higher plane than legislative enactment insofar as being subject to attack for failure to square with the Federal Constitution. Miss. & Mo. R. R. Co. v. McClure, 10 Wall. 511, 19 L. Ed. 997; Denver v. New York Trust Co., 187 Fed. 890, 225 U. S. 707; New Orleans Water Works Co. v. Louisiana Sugar Refining Co., 125 U. S. 18, 31 L. Ed. 607.

[fol. 116] *Police Power*

Counsel for appellees concede that justification for the Amendment in question must be found under what has been judicially termed the "police power" of the state. There

is, in the strict sense, no federal police power, A. F. of L. v. Watson, 60 F. Supp. 1010, because that is one of the powers impliedly reserved to the states by the Tenth Amendment. Justice Taney in License Cases, 5 Howard 504, 583, 12 L. Ed. 257, defined the police powers of a state as being "nothing more or less than the powers of government, inherent in every sovereignty to the extent of its dominions." This undefined power of government covering the health, safety, or welfare of the people bears the same relation to the state that the principle of self-defense bears to the individual.

The Question

Recognizing, then, that the liberty to, and right of, contract are not absolute and unyielding but are subject to being limited, restrained, and circumscribed in the interest of the state and the welfare of its people, the question here is: Was the police power of the state (by the people's adoption of the Constitutional Amendment here under review) so unreasonably, arbitrarily, or capriciously exercised as to be unconstitutional and therefore void?

Freedom to Contract—Due Process

Appellants' first assignment of error and proposition of law state, in effect, that the Amendment under consideration is unconstitutional: first, in that it violates that part of Article 1, Section 10 of the United States Constitution which says "No state shall . . . pass any . . . law impairing the obligation of contracts . . ."; and, second, in that it is also violative of that part of the Fourteenth Amendment which sets forth the proposition that "No state shall make or enforce any law which shall . . . deprive any person of life, liberty, or property, without due process of law; . . .".

[fol. 117] It is well settled that for certain proper purposes the state may limit the constitutionally guaranteed freedom to, and sanctity of, contract. Appropriate exercise of the state's police power, e.g., legislation in the interest of the public health, safety, and welfare, has been held to be such a purpose. And relations between employer and employee have been recognized by the United States Supreme Court to be proper subjects for legislative regulation under the state's police power to legislate for the general welfare. Thornhill v. Alabama, 310 U. S. 88, 84 L. Ed. 1093;

Carpenters etc. Union v. Ritter's Cafe, 315 U. S. 722, 86 L. Ed. 1143; West Coast Hotel Co. v. Parrish, 300 U. S. 379, 81 L. Ed. 703; 11 Am. Jur., Constitutional Law, section 345, and cases therein cited. It would serve no useful purpose to multiply authorities or extend this opinion with examples of such use of the police power.

There is no disagreement between the litigants that the Amendment under consideration is an attempted use of the police power; and as such it must stand or fall. The first task, then, is to determine by what standards a court should judge whether such power has been properly used. Both appellants and appellees direct our attention to, and rely for the most part upon, the standards for judgment set forth in three landmark decisions of the United States Supreme Court and one decision from this court. Nebbia v. New York, 291 U. S. 502, 78 L. Ed. 940; West Coast Hotel Co. v. Parrish, supra; Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 78 L. Ed. 413; State v. Childs, 32 Ariz. 222, 257 P. 366, 54 A.L.R. 736.

In the Nebbia case the question for decision was whether the New York statute fixing the minimum selling price for milk violated the due process and equal protection clauses of the Fourteenth Amendment of the Federal Constitution. The United States Supreme Court sustained the validity of the New York law stating in part:

> [fol. 118] "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects State action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that *the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained.* * * *"
>
> * * * * * * *
>
> "So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation

adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have a *reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied,* and judicial determination to that effect renders a court functus officio. * * * *With the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal.* The courts of decision in this court exhibit a firm adherence to these principles. Times without number we have said that the *legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity,* and that though the court may hold views inconsistent with the wisdom of the law, *it may not be annulled unless palpably in excess of legislative power.*" (Emphasis supplied.)

In State v. Childs, supra, this court was faced with the question of whether a statute which required, among other things, that patent or proprietary drugs be sold only by registered pharmacists was a proper exercise of the police power to legislate for the public health and safety. In denying that it was a proper exercise of the power this court said:

"* * * *while every presumption is in favor of the validity of a statute, yet when it clearly appears that on no reasonable theory could such a one contribute to the public health or safety,* it is the duty of the courts to so declare and to set it aside as unconstitutional, * * *. (Citing cases.)"

* * * * * * *

"* * * This (police power is, no doubt, a very broad one, and, within its legitimate sphere, a very useful one. It is wholly within the discretion of the Legis- [fol. 119] lature when to exercise it, and to determine what are the best means to accomplish the desired object. *Courts will never assume to determine whether the law is a wise one, or whether the Legislature has adopted the best means.* Yet there is a limit to this

power. A law enacted in the exercise of the police power must, in fact, be a police law. * * * It is, at least, settled that, *if it is apparent on the face of the act that its provisions, from their very nature, cannot and will not conduce to any legitimate police purpose, it is the right as well as the duty of the court to pronounce it* invalid. * * *." (Emphasis supplied.)

In West Coast Hotel Co. v. Parrish, supra, the Supreme Court upheld as a valid exercise of the police power a law of the State of Washington which authorized the fixing of minimum wages for women. In that case the court specifically reaffirmed its holding in the Nebbia case quoting much of the same language from it that we have here set out as the standard, test, or measure by which to judge whether the police power has been appropriately exercised.

In Home Building & Loan v. Blaisdell, supra, the Supreme Court upheld a Minnesota law extending the period of redemption in mortgage foreclosures as against the contention that such law impaired the obligation of existing mortgages. The court, after restating the proposition that proper police legislation may justify state regulation of contract rights, said:

> "* * * The question is not whether the legislation affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." * * *"

Other pronouncements of the United States Supreme Court on the subject of the standard or test by which the validity of the exercise of police power is judged are as follows:

> "* * * But liberty of making contracts is subject to conditions in the interest of the public welfare, and which shall prevail—principle or condition—*cannot be defined by any precise or universal formula.* Each instance of asserted conflict must be determined by itself, and it has been said many times that *each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the* legislation and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some con

stitutional restraint, or that the public welfare is not subserved by the legislation. *The legislature is, in the* [fol. 120] *first instance, the judge of what is necessary for the public welfare, and a judicial review of judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance.*" Erie R. Co. v. Williams, 233 U. S. 625, 58 L. Ed. 1155. (Emphasis supplied.)

"* * * Hence, in passing on the validity of present classification, it is not the province of a court to hear and examine evidence for the purpose of deciding again a question which the legislature has already decided. *Its function is only to determine whether it is possible to say that the legislative decision is without rational basis.* * * *" Clark v. Paul Gray, 306 U. S. 583, 83 L. Ed. 1001. (Emphasis supplied.)

See also: Florida C. & P. R. Co. v. Reynolds, 183 U. S. 471, 46 L. Ed. 283; Ex Parte McCardle, 7 Wall. 506, 19 L. Ed. 264; Soon Hing v. Crowley, 113 U. S. 703, 28 L. Ed. 1145; South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 82 L. Ed. 735; Stephenson v. Binford, 287 U. S. 251, 77 L. Ed. 288; Standard Oil Co. v. Marysville, 279 U. S. 582, 73 L. Ed. 857; Nashville, etc., Ry. Co. v. White, 278 U. S. 456, 73 L. Ed. 453; McLean v. Arkansas, 211 U. S. 539, 53 L. Ed. 315; Tanner v. Little, 240 U. S. 369, 60 L. Ed. 691; Chicago B. & Q. R. Co. v. McGuire, 219 U. S. 549, 53 L. Ed. 329; Arizona Copper Co. v. Hammer, 250 U. S. 400, 63 L. Ed. 1059; Gant v. Oklahoma City, 289 U. S. 98, 77 L. Ed. 1058; Bayside Fish Flour Co. 1. Gentry, 297 U. S. 422, 80 L. Ed. 772.

Yardstick

These quotations have been set forth at the risk of lengthening this opinion in order to demonstrate that the test is not an exact one, but that from the pronouncements of the United States Supreme Court we can obtain at least some general guidance as to a standard by which to judge the validity of such legislation. Summed up, it might be stated like this: The right of contract may be regulated by proper use of the police power of the state. Legislation in aid of this police power carries with it a strong presumption of validity, placing the burden of proof upon him who at-

tacks it. It is not the province of the courts to review either the wisdom or practicability of the Amendment, nor does the earnest conflict of opinion on these matters bring it within judicial cognizance. Such legislation can be annulled by court decision only if it is palpably in excess of [fol. 121] legislative power, if it is without any rational basis, and if on no reasonable theory could it contribute to the public health, welfare, or safety.

Reasonableness & Discrimination

Nor is the Amendment in question indefensible on the grounds of reasonableness. The National Labor Relations Act prohibits "yellow dog" contracts in much the same fashion as our own legislature has prohibited them in Arizona, Sections 43-1608 and 56-120, A. C. A. 1939. The United States Supreme Court has sustained this federal legislation, N. L. R. B. v. Jones & Laughlin S. Corp., 301 U. S. 1, 81 L. Ed. 893; Phelps Dodge Corp. v. N. L. R. B., 313 U. S. 177, 85 L. Ed. 1271. If it is proper to legislate to the effect that no employee shall be forced, as a condition of employment, to be a nonunion man, it would seem that legislation providing that no employee shall be forced, as a condition of employment, to be a union man, would be but a logical counterpart. Appellants attempt to answer this by an interesting contradiction within their own briefs. On the one hand they direct our attention to outdated and overruled cases and annotations holding anti-yellow dog contract legislation invalid. They admit that the Arizona statutes have never been tested, but suggest by implication that if tested they would, on the basis of this old line of decisions, be found invalid. Then, they conclude, "That if a law which prohibits an employer from denying employment to a union member is invalid, then the converse is true, and the amendment which prevents an employer from denying employment to a nonunion laborer is also invalid." However, in their own opening brief they recognize that "yellow dog" contracts now can be and are constitutionally outlawed, and that their own citations to the contrary are now obsolete, overruled, and no longer the law when they state that "the state can constitutionally outlaw the so called 'yellow dog' contract whereunder nonmembership in the union is required as a condition of employment." (The old line of cases upholding "yellow dog" contracts was

[fol. 122] based upon Coppage v. Kansas, 236 U. S. 1, 59 L. Ed. 441. As was stated in Phelps Dodge Corp. v. N. L. R. B., supra, "The course of decisions in this Court since Adair v. United States * * * and Coppage v. Kansas * * * have completely sapped those cases of their authority.")

Appellants then continue with the other half of their contradiction. Assuming this time that our anti-yellow dog contract statutes are valid, they contend that the Amendment under consideration is discriminatory and unconstitutional by the terms of the Fourteenth Amendment in that it constitutes an "outrageous denial" to unions and union members of equal protection of the law. The gist of their argument is this: "Neither section (46-1608 or 56-120, A. C. A. 1939, invalidating yellow dog contracts) makes it unlawful for the employer to deny employment to a union man or to discharge him on the ground that he is a member of a union. The sections are limited in operation to the execution of contracts whereby the employee agrees not to remain or become a member of a labor organization. While the employer, if the sections are valid, would have no right to enter into the contracts condemned, he would have the undoubted right to refuse to hire a union man, and the right to discharge him upon the ground that he was a member of the union."

Appellants concede that in the field of interstate industries the National Labor Relations Act provides the protection they seek. In regard to those industries whose business is wholly intrastate we must point out that the equal protection clause requires only "that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed." Hayes v. Missouri, 120 U. S. 68, 30 L. Ed. 578. There is no question but that this test is here met. Nor is it necessary for the people to have encompassed in one constitutional amendment a corrective for all the evils which may or do arise in the field of employer-employee relations.

> [fol. 123] * * * This Court has frequently held that the legislative authority, acting within its proper field, is not bound to extend its regulation to all cases which it might possibly reach. The legislature "is free to recognize degrees of harm and it may confine its re-

strictions to those classes of cases where the need is deemed to be clearest.' *If 'the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.'* There is no 'doctrinaire requirement' that the legislation should be couched in all embracing terms.' * * *" West Coast Hotel Co. v. Parrish, supra. (Emphasis supplied.)

* * * * * * *

"* * * *We have frequently said that the legislative authority exerted within its proper field, need not embrace all the evils within its reach.* The Constitution does not forbid 'cautious advance, step by step,' in dealing with evils which are exhibited in activities within the range of legislative power. * * *" N. L. R. B. v. Jones & Laughlin S. Corp., supra. (Emphasis supplied.)

* * * * * * *

"Any legislation in exercise of the police power must perforce affect in different degrees persons or groups within its orbit who occupy different economic, social or political positions with reference to the ends sought by the legislation. Thus Chapter 328 may enable a non-union workman to obtain a 'free ride' by receiving benefits attained through the expense and efforts of union workmen, but neither this nor other illustrations which might be given of the variable incidences of the statute upon persons differently circumstanced can render the Act discriminatory. Chapter 328 is geographically coextensive with the State of North Carolina and its provisions are applicable with the same force to all employers within those boundaries just as they are applicable to all employees therein. It is difficult to see how, within the scope of its authority, the statute could be more uniform in its application." State v. Whitaker, N. C., decided Dec. 19, 1947, not yet reported. (Emphasis supplied.)

We hold that by this standard the Amendment is not discriminatory, and, hence, appellants' assignment of error No. 2 is without merit.

Pro and Con

As stated before, because of the presumption that the Amendment is a proper exercise of the police power in the interest of the public, the burden is upon appellants to establish that it is without rational basis. To sustain this [fol. 124] burden they earnestly contend that such a law strikes at the roots of the security of unionism as an institution, and that enforcement of the Amendment will eventually destroy labor organizations in Arizona. Argueudo, they say that outlawing any type of union-security agreement (whether the traditional union shop, closed shop, or maintenance of membership) destroys the principle which, as Justice Jackson said, is the "ultimate goal of most union endeavor." Wallace Corp. v. N. L. R. B., 323 U. S. 248, 89 L. Ed. 216. Union security agreements, they claim, have never been judicially held malum in se but on the contrary are an established practice in modern industrial society and have been uniformly recognized and upheld throughout the nation. They contend that any abuses or injurious practices that may exist therein may be readily corrected by legislation aimed specifically at such abuses without absolute prohibition of union-security contracts. They further point out that such agreements are of benefit to organized labor in that they are designed to gain job security, protection from discrimination, equality of bargaining power, and the promotion of better working conditions for all employees; that with such agreements in force disciplinary action may be more effectually imposed upon workers to compel their compliance with existing contracts; and, finally, that they eliminate jurisdictional strife and result in better labor-management cooperation. Incidentally, they point out, such agreements eliminate the "free riders" (nonunion members who benefit by union efforts but do not share the costs). All in all, they conclude, that there are no overwhelming evils incident to the union-security relationship that can be cured only by prohibitory legislative fiat such as the Amendment in question. Based upon their contention that circumstances do not warrant the suppression of such agreements, they charge the Amendment to be arbitrary, unreasonable, and excessive.

Appellees, however, maintain that appellants' claim as to injuries resulting from the Amendment are "more fanciful than real" in that the Amendment does not discriminate

against union members, prohibit membership in a union, [fol. 125] or interfere with well-established collective bargaining processes such as the right to strike and to picket peaceably. Furthermore, appellees contend that the Amendment was enacted through the initiative by the people of the State of Arizona (our supreme legislative power) to eliminate bona fide abuses that had arisen in the field of labor-management relations, and to overcome the evils incident to the closed shop. This was an effort by the legislative department to satisfy what they believed were the demands of public welfare by diminishing in part the area of permissible conflict open to industrial combatants. Evidently the people of Arizona determined that in the public interest the weapons which labor might use in obtaining its ends required further restriction. On the national scene the Taft-Hartley Act undoubtedly was adopted for that very purpose. (See Committee Reports of the 80th Congress, First Special Session, Senate Report No. 105 and House Report 245 outlining existing abuses.) From the 1946 Initiative and Referendum Publicity Pamphlet and from appellees' brief we summarize some of the evils and abuses alleged to have arisen: (1) a monopoly of labor which the closed shop fosters such being its ultimate goal; (2) "feather-bedding," (doing less than a worker is capable of, caused by restrictive union rules); (3) secondary boycotts; (4) jurisdictional disputes. Affirmatively appellees assert that the Amendment aids in establishing industrial peace and, above all, that it prohibits a denial or abridgment of any person's right to obtain or retain employment because of nonmembership in any labor organization.

The people of the State of Arizona evidently had some deep-seated convictions upon these matters for it required the signatures of fifteen per cent of the qualified electors of the entire state to even propose an amendment to the Constitution (Article 4, Part 1, Section 2), and it is a matter of common knowledge that the arguments for and against the proposed Amendment were fully and completely presented to the people in the pre-election campaign. In adopt- [fol. 126] ing the Amendment by a very substantial majority (61,875 votes cast for and 49,557 cast against said measure) the people have in the most solemn manner evidenced their conviction that the matters prohibited by it were detrimental to the public welfare. We are not called upon here to determine either the wisdom of the people's

action or who is right and who is wrong in the opposing arguments here summarized. Possibly only time can give a correct answer to this highly controversial question. Our sole concern is whether the Amendment is in violation of the federal organic law. The test we must apply is simply to discover whether the law "has a rational basis" and "could on any reasonable theory contribute to the public welfare." The considered and deliberate action of the people of Arizona has determined this in the affirmative; rule by the majority is the essence of democracy.

Effect of Similar Legislation

In his famous dissenting opinion in Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254, Justice Brandeis said:

> "* * * Since government is not an exact science, prevailing public opinion concerning the evils and the remedy is among the important facts deserving consideration; particularly, when the public conviction is both deep-seated and widespread, and has been reached after deliberation. * * *"

See also Muller v. Oregon, 208 U. S. 412, 52 L. Ed. 551. In this regard it is instructive to note that within a fairly short space of time no less than sixteen states have adopted similar legislation, four by constitutional amendment (Arizona, amendment adopted Nov. 1946; Arkansas, amendment adopted Dec. 1944; Florida, amendment adopted Nov. 1944; Nebraska, amendment adopted Nov. 1946) and twelve by statute (Delaware 1947, Georgia 1947, Louisiana 1934, Maryland 1939, Maine 1947, North Carolina 1947, North Dakota 1947, South Dakota 1945-Const. Amend. 1947, Tennessee 1947, Texas 1947, Virginia 1947, Iowa 1947). In New Mexico the legislature has submitted a similar constitutional amendment to the people for their [fol. 127] approval. The lower courts of three of the above states have recently upheld these statutes as not being in conflict with the state and Federal constitutions. A. F. of L. v. American Sash & Door Co. (Ariz., July 28, 1947—this case); Federal Firefighters of Oak Ridge v. Roane-Anderson Co. (Tenn., April 15, 1947); Lincoln Federal Labor Union v. Northwestern Iron & Metal Co. (Nebr., July 7, 1947). In addition, the North Carolina Supreme Court in a well-reasoned opinion has sustained the validity of its

statute (State v. Whitaker, December 19, 1947); and a three-judge Federal District Court for the Southern District of Florida did likewise with the Florida statute (A. F. of L. v. Watson, 60 F. Supp. 1010, reversed by the Supreme Court of the United States on jurisdictional grounds only, A. F. of L. v. Watson, 327 U. S. 582, 90 L. Ed. 873).

In the field of federal legislation the principles set forth in the Amendment under consideration have been adopted in several instances. The Railway Labor Act, 45 U. S. C. A., section 152, Fifth, provides that:

> "Agreements to join or not to join labor organizations forbidden. Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees, by an appropriate order that such contract has been discarded and is no longer binding on them in any way."

The United States Supreme Court had occasion to review this legislation and sustained it. Virginian R. Co. v. System Fed. R. E. D., 300 U. S. 515, 81 L. Ed. 789; Texas & N. O. R. Co. v. Brotherhoods, etc., 281 U. S. 548, 74 L. Ed. 1034. Again, the Federal Bankruptcy Act of 1933 (47 Stat. 1481, sec. 77(p), (q)), prohibits a trustee in bankruptcy from entering into a closed-shop agreement with a union covering employment in any enterprise for which he is acting as trustee. And, finally, Title 1, Section 14 (b) of the Taft-Hartley Act, amending the National Labor Relations Act specifically recognizes the right of states to pass such legislation, and appropriately restricts the use of federal law when such occurs by stating:

> [fol. 128] "Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

In view of the great number of states which have seen fit to consider such legislation an appropriate and necessary

7. Motion to Dismiss by American Sash & Door Co. and W. B. Stevens.

8. Memorandum of Opinion and Order denying motions to strike and motion to dismiss for lack of capacity of parties and misjoinder.

9. Order Granting Motion to Dismiss for failure to state a claim upon which relief could be granted.

10. Judgment.

11. Notice of Appeal.

12. Appeal Bond Receipt and Memorandum.

13. Request and Order directing original papers to be sent to Supreme Court on appeal.

14. Appellants' Designation of Record and Proceedings to be contained in record on appeal.

15. Minute Entries.

16. Exhibit A to Complaint (in envelope inside back cover).

17. Appellants' Assignments of Error as set forth on pages 11-13 of their brief.

18. Decision of the Arizona Supreme Court.

19. Judgment of the Arizona Supreme Court.

20. Petition for Allowance of Appeal.

21. Assignment of Errors.

22. Statement of Jurisdiction.

23. Service of Appeal Papers and Statement Directing Attention to Par. 3, Rule 12.

24. Bond on Appeal.

25. Proof of Service of Papers required by Rule 12.

26. Order allowing Appeal.

27. Citation to Appellees.

28. Return on Citation to Appellees.

[fol. 155] 29. Stipulation for transcript of record.

30. Clerk's Certificate.

Respectfully submitted, J. H. Morgan, 425 Luhrs Building, Phoenix, Arizona; H. S. McCluskey, 926 E. McDowell Road, Phoenix, Arizona; J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 18th day of February, 1948.

Agreed to by Evo DeConcini, Attorney General, by Perry M. Ling, Chief Asst. Att. Gen'l. Moeur & Moeur, By W. A. Moeur. Jennings, Strouss, Salmon & Trask, by Charles L. Strouss.

[illegible] In the [illegible] of [illegible]

[illegible]

[illegible]

[

exercise of the police power, and in view of the recognition given by the federal government both to the principles contained in such legislation and the right of states to adopt such, it might well be presumptuous of this court, in applying the test for such legislation set down by the Supreme Court of the United States, to find our Amendment "palpably in excess of legislative power", "without rational basis", and to hold that "on no reasonable theory could it contribute to the public health, safety or welfare". We find ourselves in agreement with the following statement of Associate Justice Seawell, writing for the Supreme Court of North Carolina in the decision which sustained the constitutionality of a similar act (State v. Whitaker, supra):

> "* * * Great weight must be attached to the fact that so many separate jurisdictions have, within a short space of time, seen fit to exercise their police power in the same manner and for the same purposes. The composite will of such a broad cross section of our country cannot be lightly discarded as unreasonable, arbitrary or capricious or lacking in substantial relationship to its objective. * * *"

And, to the same effect but concerning a different sort of police power legislation, Chief Justice Hughes in West Coast Hotel Co. v. Parrish, supra, said:

> "* * * The adoption of similar requirements by many States evidences a deep-seated conviction both as to the presence of the evil and as to the means adapted to check it. Legislative response to that conviction cannot be regarded as arbitrary or capricious and that is all we have to decide. Even if the wisdom of the policy be regarded as debatable and its effects uncertain, still the legislature is entitled to its judgment."

Freedom of Speech and Assembly.

Appellants' third assignment of error and third proposition of law are devoted to the contention that "the amendment impairs and previously restrains the exercise of the [fol. 129] civil rights of assembly and speech guaranteed under the First Amendment, and as protected against state invasion by the Fourteenth Amendment", and they claim that for this reason the court erred in dismissing the complaint and rendering judgment for appellees. Appellants

[illegible]

[illegible]

[illegible]

> * * * on the contrary, it seems to us that a larger use may serve to secure the rights of free speech and assembly to all persons concerned. The statute protects the * * * right of workmen to express their individual opinions by endeavoring to join unions. The right of either side, or any faction of any side, to a labor controversy to assemble and publicize its own ideas in matters immediately * * *." State v. Whitaker, supra

Was the foregoing measure so build that the Amendment in section 6 violates the constitutional rights of freedom of speech or assembly.

Prospective and Retrospective Operation

Holding as we do that the Amendment is constitutional, there remains to be decided only the question of whether it applies to contracts existing at the effective date of the Act. Appellants, as their fourth assignment of error, charge that the trial court improperly held the Amendment to void such contracts. And a part of their fourth proposition of law states:

> "Constitutional, like statutory provisions are construed to operate prospectively only, unless on the face of the measure the contrary intention is clearly manifested. * * *"

The above quoted portion of the fourth proposition of law is entirely sound and correct. 11 Am. Jur., Constitutional Law, section 75; 16 C. J. S., Constitutional Law, section 256a; City of Shreveport v. Cole, 129 U. S. 36, 32 L. Ed. 589. It is difficult, however, to understand appellants' attempted application of this rule of law to the case at bar. The Amendment in question provides that from and after its effective date "No person shall be denied the opportunity to obtain or retain employment * * * (etc.) or [ibid. 122] any corporation, individual or association of any kind enter into any agreement, written or oral, which excludes any person from employment. * * * (etc.)". The latter clause specifically prevents future contracts of a kind inimical to the Amendment, while the former clause grants immediately to persons concerned the protection the Amendment affords. As has been previously shown, there is reserved to the state the right to regulate and control contracts, and the Constitution and laws of the state are a part of such contract. Home Bldg. & Loan Ass'n v. Blaisdell, supra. The effect of appellants' argument is that persons by making contracts extending into the future may prevent the exercise of the police power by the state. The agreements in the record extend year after year unless terminated by thirty days' notice at the end of an annual period. It must be remembered that a statute is not retrospective from the mere fact that it relates to antecedent facts. Cox v. Hart,

30 U. S. 427, 67 L. Ed. 332; State v. Martin, 59 Ariz. 438, 130 P. 2d 48. Under appellants' theory, although these agreements are found by the voters to be injurious to the public health, safety, and welfare they are immune from the exercise of the police power if executed before the police power is exercised. The gist of such argument is that rights under a contract are, under the Constitution, more sacred than the public health, safety, and welfare. A mere statement of the proposition demonstrates its absurdity.

Conclusion

In conclusion we find that the right to contract may be abridged by proper exercise of the state's police power without violating the Federal Constitution. The yardstick by which we must judge whether our Amendment constitutes such proper exercise of the police power highly confines and limits the scope of our inquiry. We may not pass on the wisdom, the practicability, or the desirability of such legislation. We must look to see only that it has some rational basis; is supportable on some reasonable theory; is not capricious, arbitrary, or discriminatory. We must further [fol. 133] guide our view by a strong presumption of validity in favor of such legislation, putting the burden upon those who attack it. Nor does this limited a review by the courts seem untoward. In the last analysis it should be and is the prerogative of the people to determine and experiment with their own social and economic legislation and for the courts merely to see that they do not get "out of bounds" and that they remain within the framework of our government by staying within the limits of the Constitution. No less an authority than Professor Charles O. Gregory, former counsel to the U. S. Department of Labor and one of the nation's foremost scholars and champions of the labor movement, has this to say on the subject of the validity of legislation such as is here before us:

> "* * * if a majority of (the voters) see fit to conclude that the closed or union shop be made unlawful in their state, that is their business. And it is hard to see on what grounds such legislation could possibly be overturned as unconstitutional." Gregory, Labor and the Law, Norton & Co., 1st Ed., 1946, page 115.

A consideration of all these fundamental concepts impels the conclusion that this Amendment to the Arizona Consti-

tution, when measured by the yardstick fashioned for us by the United States Supreme Court, does not contravene any provisions of the federal organic law. We cannot say that it does not have a rational basis or could not on some reasonable theory contribute to the public welfare, where, as here, it is addressed to a legitimate end and the measures taken are considered by the voters reasonable and appropriate to that end. The rights of free speech and assembly remain inviolate. Labor's basic rights to organize into a union, bargain collectively, to strike, and peaceably picket are not abridged. Those things being established, the wisdom and propriety of the legislative action is not for the determination of the courts, but is a matter for the determination of the people of this sovereign state upon whom the duty and responsibility of decision rests. There is then both the force of logic and the recognition and will of the [fol. 134] people of Arizona that this is necessary and proper legislation. Together with this, there is a similar recognition on the part of the people of fifteen other states and the Federal Government that this is a desirable and proper use of the police power directed toward an appropriate legislative purpose. There can be no valid argument made that such legislation is discriminatory or that its effect upon existing contracts should be limited.

Judgment affirmed.

Levi S. Udall, Justice.

Concurring: Arthur T. LaPrade, Justice.

[fol. 135] OPINION

Stanford, C. J., dissenting in part:

I favor the majority opinion in upholding the following portion of the Amendment:

> "No person shall be denied the opportunity to obtain or retain employment because of non-membership in a labor organization, * * *."

I agree with the statement of law made by Justice Hughes in the case of Truax v. Raich, 239 U. S. 33, 36 Sup. Ct. Rep. 7, wherein he said:

> "* * * It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the per-

sonal freedom and opportunity that it was the purpose of the Amendment to secure. * * *"

The second portion of the Amendment is unconstitutional, for the constitution prohibits the impairment of contracts, but the majority opinion approves and upholds it on the grounds of the state's police power. On that subject from the case of Treigle v. Acme Homestead Asso., 297 U. S. 189, 80 L. Ed. 575, I quote:

> "Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

Also from the case of Home Building & Loan Asso. v. Blaisdell, 290 U. S. 398, 78 L. Ed. 413, I quote:

> "* * * the relief afforded and justified by the emergency, in order not to contravene the constitutional provision, could only be of a character appropriate to that emergency and could be granted only upon reasonable conditions."

I think that to exercise the police power in support of the second portion of this Amendment is arbitrary and oppressive, and I accordingly dissent.

R. C. Stanford, Chief Justice.

[fol. 136] [File endorsement omitted]

IN THE SUPREME COURT OF ARIZONA

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed February 16, 1948

To the Honorable R. C. Stanford, Chief Justice of the Supreme Court of the State of Arizona:

Your petitioners, American Federation of Labor, Arizona State Federation of Labor, Phoenix Building and Construction Trades Council, United Brotherhood of Carpenters

and Joiners of America, Millmen, Cabinet Makers and Lumber Handlers Union No. 2563, Forest L. Stiers, individually and as President of Local Union No. 2563, and Ralph Henley, d.b.a. Ralph Henley Millwork, respectfully show:

1. The petitioners are various labor organizations functioning in the State of Arizona and particularly in the City of Phoenix, one individual member and officer of one of such organizations, and an individual employer engaged in the manufacture of wood products in the City of Phoenix. On February 12, 1947, petitioners filed a complaint in the [fol. 137] Superior Court of Maricopa County seeking a declaratory judgment and equitable relief in respect to the application or attempted application as against them of an amendment to the Constitution of the State of Arizona, adopted in November of 1946 and commonly referred to as the "Right-to-Work or Anti-Closed-Shop" Amendment. Such Amendment purported to outlaw all existing and future closed-shop or union-security agreements or other type of agreement requiring membership in a labor organization as a condition of employment. The complaint named as defendants two employers, three individuals discharged under union-shop agreements, and the Attorney General of the State. The complaint alleged that the Amendment, as applied to the plaintiffs in respect to specific situations, was contrary to the Federal Constitution.

2. The defendants moved to dismiss the complaint on the ground that, since the Amendment was constitutional, the complaint stated no cause of action. The trial court granted such motion to dismiss for such reason.

3. The petitioners thereupon appealed to this Court from the judgment granting the motion to dismiss the complaint, and on February 4, 1948, this Court entered a decision and judgment affirming the judgment below. This Court is the highest court of Arizona in which a decision in this suit can be had, and this Court's decision and decree in this cause is final.

4. In this cause there was drawn in question the validity of the so-called "Right-to-Work or Anti-Closed-Shop" Amendment to the Arizona Constitution, adopted in 1946, on the ground that said Amendment was repugnant to the Constitution and Laws of the United States, and the decision

of this Court was in favor of the validity of such Amendment, notwithstanding your petitioners' contention, made both before the trial court and this Court, that the said Amendment violated the First and Fourteenth Amendments to the United States Constitution and Article I, Section 10, thereof.

[fol. 138] 5. The errors upon which your petitioners claim to be entitled to an appeal are more fully set out in the assignment of errors, filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States; and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States, which statement demonstrates that the federal questions are substantial and that the issues are of sufficient importance to warrant, indeed to require, consideration and determination by the Supreme Court of the United States.

Wherefore, your petitioners pray for the allowance of an appeal from the said Supreme Court of the State of Arizona, the highest court of said State in which a decision in this cause can be had, to the Supreme Court of the United States, in order that the decision and judgment or decree of the said Supreme Court of the State of Arizona may be examined and reversed, and also pray that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Arizona, under his hand and seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of the petitioners; and that [fol. 139] the bond for costs tendered by the petitioners be approved.

J. H. Morgan, 425 Luhrs Building, Phoenix, Arizona; H. S. McCluskey, 926 E. McDowell Road, Phoenix, Arizona; J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 16th day of February, 1948.

[fol. 140] [File endorsement omitted]

IN THE SUPREME COURT OF ARIZONA

[Title omitted]

ASSIGNMENT OF ERRORS—Filed February 16, 1948

Come now the above named appellants, and as appellants to the Supreme Court of the United States from the decision and judgment or decree heretofore entered herein, assign as error the following:

1. The Supreme Court of the State of Arizona erred in failing to hold that the so-called "Right-to-Work or Anti-Closed-Shop" Amendment, by forbidding appellants under any and all circumstances to enter into any type of union-security agreement and by denying the union appellants their only proven and practical method of protecting their standards, stabilizing their gains, and obtaining an adequate share of the joint product of capital and labor, among other things, deprived such appellants of rights, liberties [fol. 141] and freedoms protected under the Fourteenth Amendment to the United States Constitution, and in failing to hold that such absolute and unconditional proscriptions against entering into union-security agreements contained in the "Right-to-Work or Anti-Closed-Shop" Amendment were arbitrary, unreasonable, excessive and without rational basis.

2. The Supreme Court of the State of Arizona erred in failing to hold that said "Right-to-Work or Anti-Closed-Shop" Amendment arbitrarily and unreasonably impaired the obligations of contracts entered into prior to the adoption of the said Amendment, to which contracts several of the appellants were parties, all in violation of Article I, Section 10, of the United States Constitution.

3. The Supreme Court of the State of Arizona erred in failing to hold that said "Right-to-Work or Anti-Closed-Shop" Amendment, by favoring non-union workers over union workers, and by permitting employers to retain all their traditional methods of consolidating gains against competition of other employers and against demands of organized labor, while denying to union members their one method of improving their conditions and consolidating their gains against the competition of non-union workers

and against the competition of employers for a fair share in the national income, all without providing an adequate substitute method, deprived the union appellants of the equal protection of the law, contrary to the Fourteenth Amendment to the United States Constitution.

4. The Supreme Court of the State of Arizona erred in failing to hold that said "Right-to-Work or Anti-Closed-Shop" Amendment, by outlawing the union-security agreement, and thus imperiling the very existence of labor [fol. 142] organizations and their ability adequately to function in the interests of working people, restrained the union appellants in the exercise of fundamental rights of working people protected as a concomitant of the rights of speech and assembly under the First Amendment, and protected against invasion by the State under the Fourteenth Amendment.

5. The Supreme Court of the State of Arizona erred in holding that the said "Right-to-Work or Anti-Closed-Shop" Amendment is constitutional, valid and enforceable, both on its face and as applied in the present case, under the First and Fourteenth Amendments to the United States Constitution and Article I, Section 10, thereof; in failing to hold to the contrary; in affirming the judgment of the trial court dismissing appellants' complaint; and in failing to grant the relief requested.

Wherefore, on account of the errors hereinbefore assigned, petitioners pray that the said decision and decree of judgment of the Supreme Court of the State of Arizona, dated the 4th day of February, 1948, in the above entitled cause be reversed and judgment entered in favor of these appellants.

J. H. Morgan, 425 Luhrs Building, Phoenix, Arizona; H. S. McCluskey, 926 E. McDowell Road, Phoenix, Arizona; J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C., Counsel for Petitioners.

Dated this 16th day of February, 1948.

[fols. 143-145] Bond on appeal for $1,000, approved and filed Feb. 17, 1948, omitted in printing.

[fol. 146] [File endorsement omitted]

IN THE SUPREME COURT OF ARIZONA

[Title omitted]

PROOF OF SERVICE—Filed February 17, 1948

STATE OF ARIZONA,
County of Maricopa, ss:

J. H. Morgan, one of the attorneys for appellants in the above entitled action, being first duly sworn, deposes and says:

That on the 17th day of February, 1948, at Phoenix, Arizona, he personally served Evo de Concini, Attorney General of the State of Arizona, Messrs. Moeur & Moeur, and Messrs. Jennings, Strouss, Salmon & Trask, Attorneys for the Appellees in the above entitled action, true and correct [fol. 147] copies of the following papers and documents in connection with the appeal from the judgment of the Supreme Court of Arizona in the above entitled action, to-wit:

1. A copy of the Petition for Allowance of Appeal;

2. A copy of the Assignments of Error;

3. A copy of the Statement as to Jurisdiction;

4. A copy of Order allowing Appeal, signed by Chief Justice R. C. Stanford of the Supreme Court of Arizona, on February 16, 1948;

5. Copy of Citation signed by the Chief Justice and Clerk of the Supreme Court on February 16, 1948;

All of the foregoing papers, with the exception of the Citation, having been filed with the Clerk of said Supreme Court on the 16th day of February, 1948; and the original citation being returned herewith;

6. Statement directing attention to Par. 3 of Rule 12 of the Rules of the Supreme Court of the United States, the original of which is being filed with the Clerk of said Court on this date;

7. Copy of Bond filed with the Clerk of said Supreme Court and approved by the Chief Justice on February 17, 1948.

J. H. Morgan.

Subscribed and sworn to before me this 17th day of February, 1948. Kitty C. Aitken, Notary Public. My Commission expires March 14, 1951. (Notarial Seal.)

[fol. 148] [File endorsement omitted].

IN THE SUPREME COURT OF ARIZONA

[Title omitted]

ORDER ALLOWING APPEAL—Filed February 16, 1948

The petition of American Federation of Labor, Arizona State Federation of Labor, Phoenix Building and Construction Trades Council, United Brotherhood of Carpenters and Joiners of America, Millmen, Cabinet Makers and Lumber Handlers Union No. 2093, Forest L. Stiers, individually and as President of Local Union No. 2093, and Ralph Henley, d.b.a. Ralph Henley Millwork, the appellants in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the decision and decree of the Supreme Court of the State of Arizona, having been filed with the Clerk of this Court and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by Rule 46 of [fol. 149] the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final decision and decree, dated the 4th day of February, 1948, of the Supreme Court of the State of Arizona, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Arizona shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall

be designated by praecipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered and that the said appellants shall give a good and sufficient bond for costs in the sum of One Thousand Dollars, and that appellants shall prosecute said appeal to effect and answer all costs if they fail to make their plea good.

R. C. Stanford, Chief Justice of the Supreme Court of the State of Arizona.

Dated this 16th day of February, 1948.

[fols. 150-152] Citation in usual form showing service on Perry M. Ling, et al., filed Feb. 17, 1948, omitted in printing.

[fol. 153] [File endorsement omitted]

IN THE SUPREME COURT OF ARIZONA

[Title omitted]

STIPULATION FOR TRANSCRIPT OF RECORD—Filed February 18, 1948

To the Clerk of the Supreme Court of the State of Arizona:

Kindly prepare for transmittal to the Supreme Court of the United States a true copy of the entire record in this case, both as on appeal to this Court and to the Supreme Court of the United States, and including the decision and decree or judgment of the Supreme Court of the State of Arizona. More specifically, such record shall include the following:

1. Complaint.
2. Motion to Strike by Attorney General.
3. Motions to Strike by other Defendants.
4. Motion to Dismiss by Attorney General.

[fol. 154] 5. Motion to Dismiss by American Sash & Door Co. and W. B. Stevens.

6. Motion to Dismiss by D. A. Brewer and Edward L. Beard.

the trial court made and entered in said cause be affirmed. Costs in this court to appellees of and from said appellants as principals on their cash bond on appeal filed in the case.

[fols. 157-159] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 160] IN THE SUPREME COURT OF THE UNITED STATES

APPELLANTS' STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed February 26, 1948

Comes now the appellants and adopt their assignments of error as their statement of the points to be relied upon, and represent that the whole of the record, as filed, is necessary for the consideration of the case.

J. Albert Woll, Herbert S. Thatcher, James A. Glenn, 736 Bowen Building, Washington 5, D. C.; J. H. Morgan, 425 Luhrs Building, Phoenix, Arizona, Counsel for Appellants.

Dated this 26th day of February, 1948.

[fol. 160a] [File endorsement omitted.]

[fol. 161] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—March 29, 1948

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 52,856. Arizona Supreme Court. Term No. 626. American Federation of Labor, Arizona State Federation of Labor, Phoenix Building and Construction Trades Council, et al., Appellants, vs. American Sash & Door Company, D. A. Brewer, W. B. Stevens, et al. Filed February 25, 1948. Term No. 626, O. T. 1947.